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THESIS

Preparing for the Unexpected,  
Contracting in Contingency Situations

by

Scott J. Koster

December 1991

Thesis Advisor

Rodney F. Matsushima

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92-02105



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## Unclassified

Security Classification of this page

**REPORT DOCUMENTATION PAGE**

1a Report Security Classification Unclassified		1b Restrictive Markings	
2a Security Classification Authority		3 Distribution Availability of Report Approved for public release; distribution is unlimited.	
2b Declassification/Downgrading Schedule			
4 Performing Organization Report Number(s)		5 Monitoring Organization Report Number(s)	
6a Name of Performing Organization Naval Postgraduate School	6b Office Symbol Code 36	7a Name of Monitoring Organization Naval Postgraduate School	
6c Address (city, state, and ZIP code) Monterey, CA 93943-5000		7b Address (city, state, and ZIP code) Monterey, CA 93943-5000	
8a Name of Funding/Sponsoring Organization	8b Office Symbol (If Applicable)	9 Procurement Instrument Identification Number	
8c Address (city, state, and ZIP code)		10 Source of Funding Numbers Program Element Number      Project No      Task No      Work Unit Accession No	
11 Title (Include Security Classification) Preparing for the Unexpected, Contracting in Contingency Situations			
12 Personal Author(s) Koster, Scott J.			
13a Type of Report Master's Thesis	13b Time Covered From                  To	14 Date of Report (year, month, day) 1991 December	15 Page Count 121
16 Supplementary Notation The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.			
17 Cosati Codes		18 Subject Terms (continue on reverse if necessary and identify by block number) Contingency Contracting, Contingency, Planning, Contracting	
19 Abstract (continue on reverse if necessary and identify by block number)  The purpose of this study was to evaluate the quality of the preparation that contracting professionals receive prior to contingency contracting situations. This was accomplished by exploring the literature on this subject and then comparing the findings and recommendations found with recent experience of contracting professionals returning from Desert Shield and Desert Storm. Contingency contracting issues analyzed include the identification of critical demands, effectiveness of current preparation, effects of laws and regulations, and contingency contracting tools.  As a result of this analysis, it can be concluded that current instruction and on-the-job training is sufficient to provide contracting professionals with the requisite competence for contingency contracting situations. There is a need to involve contracting professionals early in the contingency planning process. Current laws and regulations did not constrain procurement of supplies and services during Desert Shield/Storm. The use of contingency contracting tools are paramount to the success of the contracting function in a contingency contracting situation and need to be assemble well in advance. This study recommends the continued education and training of contracting professionals in its present form, raising the thresholds for SF 44's and small purchase procedures for contingency situations, and improvement of contingency contracting kits.			
20 Distribution/Availability of Abstract <input checked="" type="checkbox"/> unclassified/unlimited <input type="checkbox"/> same as report <input type="checkbox"/> DTIC users		21 Abstract Security Classification Unclassified	
22a Name of Responsible Individual Rodney Matsushima		22b Telephone (Include Area code) (408) 646-2052	22c Office Symbol Code AS/MY

DD FORM 1473, 84 MAR

83 APR edition may be used until exhausted

security classification of this page

All other editions are obsolete

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Preparing for the Unexpected,  
Contracting in Contingency Situations

by

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Captain, U.S. Marine Corps  
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Submitted in partial fulfillment of the  
requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

from the

NAVAL POSTGRADUATE SCHOOL  
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## ABSTRACT

The purpose of this study was to evaluate the quality of the preparation that contracting professionals receive prior to contingency contracting situations. This was accomplished by exploring the literature on this subject and then comparing the findings and recommendations found with recent experience of contracting professionals returning from Desert Shield and Desert Storm. Contingency contracting issues analyzed include the identification of critical demands, effectiveness of current preparation, effects of laws and regulations, and contingency contracting tools.

As a result of this analysis, it can be concluded that current instruction and on-the-job training is sufficient to provide contracting professionals with the requisite competence for contingency contracting situations. There is a need to involve contracting professionals early in the contingency planning process. Current laws and regulations did not constrain procurement of supplies and services during Desert Shield/Storm. The use of contingency contracting tools are paramount to the success of the contracting function in a contingency contracting situation and need to be assembled well in advance. This study recommends the continued education and training of contracting professionals in its present form, raising the thresholds for SF 44's and small purchase procedures for contingency situations, and improvement of contingency contracting kits.



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DTIC TAB	<input type="checkbox"/>
Unassigned	<input type="checkbox"/>
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## I. INTRODUCTION

### A. BACKGROUND

The critical demands placed on contingency contracting situations are widespread and many times not clearly defined or identified. Early preparation for contingency contracting situations by contracting professionals, is crucial in order to meet these critical demands. Identifying and meeting these critical demands of contingency contracting situations, regardless of the location, is the challenge faced by contracting professionals. The upcoming budget cuts will cause the reduction of United States bases and personnel overseas. Because of the importance of a military presence overseas, one could expect an increase in military exercises in foreign countries. Contracting professionals can expect to be faced with a corresponding increase in contingency contracting situations to support these exercises.

This study is intended to help contracting professionals identify critical demands and prepare to meet these demands in contingency contracting situations. Defining the critical demands are not always obvious or consistent from one exercise to another. This inconsistency hampers contracting professionals' ability to effectively prepare for these critical demands. Advanced preparation by contracting professionals during the planning stages will help provide effective contracting support throughout the execution of the operation plans.

Additionally, this study benefits from the recent experience of numerous contracting professionals who took part in Desert Shield and Desert Storm. The initial buildup during operation Desert Shield established the requirement for immediate contracting support. This support came in the form of procurement of supplies and services for the United States Service members involved in the operation. This study attempts to define those

critical demands of the initial phase of Desert Shield and other contingency situations and determine how contracting professionals could be better prepared to meet these demands.

Further, effective preparation, as in any procurement action, is always important. In contingency contracting situations, there may not be sufficient time during the execution of a deployment or exercise to create an adequate acquisition plan. Therefore, the contracting professional must work closely with the planners and begin preparations early in the planning stages. The ability of the contracting professional to recognize and prepare for these critical demands is important to successful contingency contracting and is the focus of this study.

## **B. OBJECTIVES OF THE RESEARCH**

The basic objective of this study is to evaluate the quality of the advance preparations of contracting professionals for contingency contracting situations. The research will evaluate the scope and limitations of this preparation in an effort to determine the adequacy and possible improvement of the preparation of contracting professionals to meet future contingency requirements.

In order to accomplish this, the researcher will explore the historical perspective of this issue and also the current perspective from recent experience. The information gathered from recent experience will be instrumental in determining those changes, if any, that need to be made.

### **C. RESEARCH QUESTIONS**

The primary research question was: What are the critical demands of typical contingency contracting situations and how might contracting professionals best be prepared to meet these demands? The subsidiary questions were:

1. What are the fundamental characteristics of typical Contingency Contracting situations?
2. What are the critical considerations that require advanced planning by contracting professionals in Contingency Contracting situations?
3. What has recent experience provided contracting professionals concerning the preparation for and execution of Contingency Contracting?
4. How might contracting professionals administer to the critical demands of Contingency Contracting situations?
5. What influence can contracting professionals and planners provide to enhance the preparation for Contingency Contracting situations?

### **D. SCOPE**

This research effort is primarily concerned with determining the critical demands of a contingency contracting situation and preparing contracting personnel to meet these demands. To accomplish this research effort, this thesis will analyze recent experience gained by contracting professionals involved in Desert Shield and Desert Storm. The scope is narrowed to those things that contracting professionals can do to better prepare themselves for the critical demands of contingency situations. It will focus the thesis on efforts such as counter-terrorist training, small purchase procedures training, Commanders training, and development of tools for use during contingency contracting situations.

### **E. LIMITATIONS**

The thesis is limited by the number of contracting professionals with experience gained through contracting in actual contingency contracting situations. Because of the

timeliness of this study in relation to the successful completion of Desert Shield/Desert Storm, there is a large population of contracting professionals that meet this profile. This population consists of over 200 contracting professionals that participated in these two operations. This experience will help form a basis to understand deficiencies, if any, existing in the preparation phases of a contingency contracting situations.

## **F. ASSUMPTIONS**

Throughout this thesis, it is assumed that the reader has a basic knowledge of Department of Defense (DoD) contractual and financial management language, as well as some familiarity with a Table of Organization and the structure of military staffs. It is also assumed that the reader is familiar with deployments and military training exercises and the operational and the logistical requirements associated with these exercises.

## **G. RESEARCH METHODOLOGY**

The information presented in this study was obtained from; (1) development of a literature base; (2) telephonic and personal discussions held with various U.S. Government personnel involved in acquisition, financial, mobilization, and contingency planning; and, (3) surveys distributed to contracting professionals involved directly with Desert Shield/Storm.

The literature base utilized in this study was collected from current DoD directives, instructions, studies, and memoranda; The Congressional Record; the Defense Logistics Studies Information Exchange (DISIE); The Naval Postgraduate Library; and a review of current publications and periodicals.

## H. DEFINITIONS

The following definitions will help develop a firm foundation in understanding the processes surrounding contingency contracting:

- A. Contingency Contracting - contracting performed in support of a peacetime contingency at an overseas location pursuant to the policies and procedures of the Federal Acquisition Regulation. [JCS Pub 1-02, 1989, p. 86]
- B. Deployment - the relocation of the force to a desired area of operations. [Mason, 1988, p. 4]
- C. Deviation - the Federal Acquisition Regulation (FAR) defines a deviation as not to adhere to policy, procedure, solicitation provision, contract clause, method, or practice of acquisition actions conducted for any reason, that is inconsistent with FAR or agency regulations. [FAR, 1989, p. 1-3]
- D. Mobilization - the rapid expansion of military forces and production to meet personnel and material demands in a war-fighting situation. This explanation requires the action of the President or Congress (usually a declaration of national emergency). The removal of the peacetime acquisition constraints happen as a result of the activation of emergency powers of the President. There are varying degrees of mobilization that the President can order. [JCS Pub 1-02, 1989, p. 227]
  - 1). Full Mobilization - the mobilization of military forces and resources to support existing and planned forces.
  - 2). Partial Mobilization - the mobilization of the reserve and the resources necessary for support. The President has limited call up authority of up to 200,000 reserve personnel without approval of Congress. [JCS Pub 1-02, 1989, p. 237]
  - 3). Total Mobilization - mobilization of resources beyond the existing force structure. This mobilization generally equals or exceeds the limit of the national economy. [JCS Pub 1-02, 1989, p. 237]
- E. National Emergency - condition declared by the President or by Congress which authorizes certain emergency actions to be undertaken in the national interest. Actions taken may range from a small contingency force to total mobilization. [Britt, 1985, p. 3]
- F. Surge - lacking a declaration of a national emergency, military production is expanded. All procurement actions fall under peacetime restrictions. The limits of this expansion is to meet material demands only. [JCS Pub 1-02, 1989, p. 232]
- G. Waiver - to give up an advantage, privilege, or right; an acknowledgment of the surrender of this advantage, privilege, or right. [Random House Inc., 1975]

## **I. ORGANIZATION OF THESIS**

This study attempts to take the reader through the subject at hand in a logical manner. Chapter II of this study is designed to give the reader a brief understanding of the development of contingency contracting and the factors that make this form of contracting a challenge to contracting professionals. Chapter III outlines the contracting effort in support of deployed forces during Desert Shield and Desert Storm. With a solid background established, Chapter IV is the analysis of the results from the questionnaire of contracting professionals with recent contracting experience during Desert Shield and Desert Storm. Chapter V will provide conclusions and recommendations.

## **II. BACKGROUND**

### **A. INTRODUCTION**

Before beginning to identify critical demands and how contracting professionals can better prepare themselves for contingency situations, certain key characteristics and information must be presented. First, a discussion of several historical events is necessary to help lay the groundwork for understanding the evolution of contingency contracting and give significance to identifying the critical demands of contingency contracting situations. Second, a review of the laws and regulations that have applications to contracting in times of National Emergency or war, and the effect these laws and regulations have on a contingency contracting situation is appropriate. Further, this chapter identifies the types of relief available from acquisition laws and regulations.

### **B. HISTORY'S ROLE**

From a historical perspective, early forms of contingency contracting existed in a rudimentary form, such as plundering, pillaging, and looting. Since its early beginnings, contingency contracting has evolved into a sophisticated form of supplying the forces in times of national emergency, war, and contingency situations. This section will review the history of contracting under these conditions, starting with the use of the Quartermaster Corps during the Civil War and ending with contingency contracting during Desert Shield and Desert Storm.

The Civil War was the first war that Quartermaster personnel (contracting officers) were co-located with the front line army divisions. This resulted in improved supply

support and a shortened logistics train. [Huston, 1976, p. 25-32] The Civil War Food & Foraging Act, 41 USC 11, cleared the way for Quartermaster personnel to procure required supplies as they saw fit.

No contract or purchase should be made unless authorized by law and under an appropriation, except in the Departments of the Army, Navy, and Air Force, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year. [Proctor & Sanders, 1984, p. 68]

This Act was important to expedite procurement during the Civil War and as we will see later, this Act is a useful tool for modern contingency contracting.

Contracting during World War I (WW I) was relatively simple for two reasons. First, the world was united to defeat the German hordes at any cost. Second, the resource base during this war seemed infinite. As a result, there was an abundance of sources available from which to procure supplies and services. The feeling at the time is best stated by Brigadier General Charles G. Dawes, General Purchasing Agent of the A.E.F., testifying before Congress, 1921.

Sure we paid....We would have paid horse prices for sheep if sheep could have pulled artillery....It's all right now to say we bought too much vinegar or too many cold chisels, but we saved the civilization of the world....Hell and Maria, we weren't trying to keep a set of books. We were trying to win a war. [Busch, 1986, p. 1]

This manner of thinking in combination with unlimited resources resulted in the widespread use of the Cost Plus Percentage of Cost (CPPC) contract type during WW I. [Dobler, Burt, & Lee, 1990, p. 285] The CPPC type contract resulted in higher costs leading to greater profits for those supplying the war effort. Today the CPPC contract is outlawed for use by the Federal Government. [Section 2306(a) 10 U.S.C.]

Like WW I, the vast resources and the industrial capacity of the United States (U.S.) were relied upon from the beginning of World War II (WW II) as a primary supplier of goods and services in support of the war effort. As a result, the procurement of the vast majority of supplies and services came from within the borders of the U.S. When the

U.S. commitment began to increase, leading to its eventual participation, shipping goods to support the war became a tremendous burden. In order to relieve the enormous strain placed on shipping, it became necessary to procure supplies and services in the theater of operation. The use of small purchasing procedures became a common and widely used tool in support of the war effort. Contracting, using these procedures, mainly capitalized on the resources of our allies, the British in particular, to help meet the immediate requirements of the war. Being able to make these purchases overseas helped cover the shipping lag [Mason, 1983, pp. 7-8]

From the onset of the Korean War, contracting became an important method of meeting the requirements of the war effort. Supplies and services contracted from Japan and Korea helped to sustain U.S. Forces Korea (USFK). [Busch, 1986, p. 8] The actual sourcing of requirements in Korea became a challenge for the acquisition personnel. The biggest challenge was establishing a resource base in South Korea. South Koreans were not properly prepared to sell goods and services to USFK. The people of the U.S. procurement agency had to teach Koreans how to cultivate sanitary vegetables, and to follow U.S. procurement specifications and other procedures.[Bok, 1987, p. 69]

From the beginning of the Vietnam Conflict, contracting officers dealt with a new problem that constrained the contingency contracting support. "The very essence of mobility planning and material support is based on the declaration of a national emergency" [Proctor & Sanders, 1984, p. 37]. Without the declaration of a national emergency during the conflict, contracting was significantly limited by the acquisition laws and regulations applicable during this period. The use of contracting avenues established previously in Korea became very useful to cover commercial shipping lag times and provide the needed supplies and services. [Petkunas, 1986, p 37]

A more recent example of contracting in a contingency situation is the invasion of Grenada, Operation Urgent Fury. The invasion itself did not generate requirements that called for immediate contracting support. The supplies needed by the attacking forces were self-contained or provided by naval support ships. Therefore, the initial invasion and subsequent takeover of the island did not require immediate contracting support.

Contracting grew in importance due to the support needed for the follow-on military mission on the island. The contracting situation was similar in nature to Vietnam in that it lacked a declaration of war or national emergency. Therefore, contracting professionals had limited relief from "peacetime" procurement laws and regulations. The very nature of this mission which was responsible for the clean-up and rebuilding of the island was labor, machine, and supply intensive. By using small purchase procedures and local contracts, the mission turned out to be a success. [Ellington, 1987, p 2-4]

The procurement of supplies and services for operation Desert Shield and Desert Storm proved to be the most demanding contingency situation contracting professionals have faced to date for two reasons. First, because of the unexpected events that caused the rapid response by our President to commit forces in defense of Saudi Arabia, and second, because of the speed of deployment and build-up of personnel and equipment in Saudi Arabia during the first 45 to 90 days of the operation.

The first 45 to 90 days of Operation Desert Shield were the most challenging for contracting professionals. This period tested the preparation, training, and abilities of contracting professionals to provide immediate support to help prepare the forces in Saudi Arabia for an imminent attack. This was a situation in which daily requirements of 300 personnel and 16 aircraft increased from an average of five to six purchase requests a day to over 80 requests a day. [Covelli] The majority of the contracting professionals assigned for duty in Saudi Arabia had little or no experience in contingency contracting

prior to their deployment. They were unprepared for the urgency and the volume at which requirements were generated. As in previous conflicts, the challenge to provide the required supplies and services on time and within the "peacetime" laws and regulations once again was the problem facing contracting professionals during Desert Shield and Desert Storm. The ingenuity of the contracting professionals to establish contracts and provide immediate supply support helped prepare the U.S. forces for their eventual success against Iraqi forces.

### C. PRESENT THINKING

With the crumbling of the Warsaw Pact and the weakening of the Soviet Union, traditional contingency plans become less important. The limited low intensity conflict becomes a major planning challenge. The unexpected nature of this type of conflict may require deployments to areas where Host Nation Support (HNS) and other agreements have not been established ahead of time, Desert Shield for example. This places the burden of providing supplies and services of an immediate nature within the laws and regulations on the shoulders of the contracting professionals.

Military actions such as Desert Shield and Desert Storm, have renewed the debate over constraints that the "Peacetime" procurement system places on contracting in a contingency situation. "Supplying the troops in limited conflicts becomes difficult if not illegal under a procurement system developed for large scale global warfare." [Garrett, 1990, p 369] Contingency contracting has recently received new emphasis as a possible "war stopper" of the DoD. Current thinking is that the laws and regulations are too restrictive in conflicts where there is no declaration of national emergency or war [Mason, Garret]; a typical contingency contracting situation. Further, it is believed that there should be an acquisition regulation that treats contingency contracting as a separate issue. [Mason, 1988, p. 30]

During Desert Shield, the DoD and Congress realized that without a declaration of national emergency or war, contracting professionals would not receive relief from "peacetime" laws and regulations. They also realized that the quantities of supplies and services and the rate at which they were required would be extraordinary. With this in mind, initial relief came when the FAR dollar limit of the use of SF 44's was raised from \$2,500 to \$25,000 in the interest of expediency. [Joint Staff Msg 130400Z Sep 90] Secondly, Congress again recognized that because of the urgency and the large quantities of supplies and services required to support the operation a change in the small purchase authority was needed. This change came as an increase to the threshold for small purchases from \$25,000 to \$100,000 in the 1991 Appropriations Act, P.L. 101-510, November 5 1990, implemented by DoD in Assistant Secretary of Defense, Production and Logistics letter dated 09 November 1990.

As the debate goes on regarding the effect of "peacetime" acquisition policy on contracting in contingency situations, contracting professionals are still faced with providing supplies and services to support the mission. Contracting professionals need to question if laws are knowingly broken in a contingency contracting situation and to what extent laws hamper their ability to support the mission. Contracting professionals also need to realize the value of the knowledge gained through training and experience so that the laws and regulations are used to help rather than hinder that support.

#### **D. CONSTITUTIONAL POLICY AND REGULATIONS**

This section discusses those laws and regulations that were legislated to correct deficient "peacetime" contracting procedures, but are believed to constrain contracting in contingency situations. [Mason, Garret, & Gilliat] This discussion begins first, with an abbreviated look at the laws that satisfy the above criteria, followed by a discussion of regulations that may also constrain contracting in contingency situations.

## **1. Laws**

There are a myriad of laws that contracting professionals must interpret and implement in order to provide adequate and timely support for the successful completion of the mission. This volume of laws can become cumbersome when contracting officials are required to perform under short time constraints. So much so that one researcher concluded:

Recent studies have shown that during these limited combat situations, i.e., contingency operations, the procurement official must often choose between jeopardizing the mission and violating the law. [Garrett, 1990, p 369]

The laws that apply to "peacetime" procurement direct contracting organizations in the performance of their duty in contingency situations. A study directed in 1987 by the Office of the Secretary of Defense identified more than 32 statutory and regulatory actions that affect contracting in a contingency situation. The following is a representation of that list:

1. Congressional Policy on Defense Procurement, [10 U.S.C. 2301] In order to maintain national defense preparedness, the Congress determined that it is in the best interest of the United States to acquire supplies and services in the most timely, economic, and efficient manner. Therefore -
  - (a) full and open competition will be adhered to by the Department of Defense;
  - (b) any type of contract (excluding cost-plus-percentage-of-cost contracts) may be used to acquire supplies and services;
  - (c) develop policies and procedures that will support the Department of Defense in time of national emergency and declared war;
  - (d) develop policies and procedures that promote the attainment and maintenance of the defense industrial base and industrial mobilization.
2. The Competition in Contracting Act (CICA), [10 U.S.C. 2304] The Head of the Agency performing procurement must promote full and open competition by using competitive procedures proclaimed under this act with the following exceptions:
  - (a) when only one responsible source and no other supplies or services will satisfy agency requirements;

- (b) an unusual or compelling urgency that the United States may be injured unless the agency is allowed to limit the number of sources that bids may be solicited from;
  - (c) to award the contract to a particular source therefore a supplier base is available in a national emergency;
  - (d) when an International agreement exists;
  - (e) when authorized or required by statute;
  - (f) in relation to national security
  - (g) when the head of the agency determines that excluding a source or sources would be in the best interest of national defense.
3. The Defense Resources Act, [50 U.S.C. 1431-1435; P.L. 85-804, as amended by P.L. 93-155] The President is empowered to authorize agencies exercising functions concerning the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to defense contracting, whenever the President considers that such action would facilitate the national defense. [FAR, 14:part 50 sect 101a] This act grants authority to perform uncommon contractual agreements. The Federal Acquisition Regulation spells out in detail what is authorized. This relief is only applicable in times of a declared national emergency or war.
4. The North Atlantic Treaty Organization Mutual Support Act (NATOMSA) of 1979 [P.L. 96-323] Through this law the secretary of the agency can waive provisions to simplify the acquisition of supplies and services. The Department of Defense must still follow prudent procurement practices. The provisions of this act apply only when dealing with members of the NATO alliance. Under these provisions procurement may be made on a reimbursement basis or a one for one replacement of like items. Additionally, this act waives nine statutory limits.

This act was amended by the Defense Authorization Act of 1987. [P.L. 99-661], including at that time non-NATO countries. To qualify, a country must meet one of the following criteria: [Mason, 1988, p 8]

1. have an alliance with the United States;
2. permit U.S. troops to be stationed within the country;
3. agree to preposition supplies and equipment;
4. Serve as a host country during exercises.

## **2. FAR**

The FAR serves as the primary Government contracting regulation. The FAR provides uniform policy and procedures for procurement by all executive agencies. Written to accomplish peacetime acquisition, the FAR was drafted with the realization that exceptions to the rule must be considered.

Let us further explore some FAR regulations that are important to contingency contracting:

### **1. Part 1: Federal Acquisition Regulation System**

Sub-part 1.4 - Deviations from the FAR. The policy of deviation approval based on a case-by-case review is quite important. There are two types of deviations;

- a. for an individual contract
- b. for a class of contracts

Deviations must be submitted in writing as far in advance as the situation warrants. This too can be waived in certain situations. Class deviations are the responsibility of the Assistant Secretary of the Defense (Production and Logistics). The head of the agency can approve individual deviations.

### **2. Part 5: Authorized Contracting Actions**

Sub-part 5.2 - Synopsis of Proposed Contract. A synopsis of each procurement action exceeding \$25,000 will be published in the Commerce Business Daily. The advertisement will fulfill the statutory time frames.

### **3. Part 6: Competition Requirements** Full and open competition shall be promoted when soliciting offers and awarding a Government contract.

Sub-part 6.2 - Other Than Full and Open Competition. There are seven exceptions to full and open competition, the exception that is most applicable in time of national emergency or full mobilization is contained in FAR 6.302-2. Exception to full and open competition requires justification and approval stating why this is an exception to competition. Justifications and approvals can be submitted and approved after contract award. The dollar amount of the action will determine the approval authority.

### **4. Part 7: Acquisition Planning.** No contract will be entered into without full and open competition. To request a waiver as a result of inadequate acquisition planning, is unacceptable.

5. Part 13: Small Purchases and Other Simplified Procedures

Sub-part 13.4 - Imprest Funds. The provisions of the FAR allow the use of the imprest funds in emergencies not to exceed \$500.00. Other maximums may be established upon approval, for instance the DoD has established \$1,000.00 as its maximum.

6. Part 15: Contracting by Negotiation Negotiations can be used if the conditions for sealed bid cannot be met. Not in all cases is negotiation the more expedient method dependent on requirements. To the maximum extent possible negotiated contracts will be awarded on a competitive basis.

Sub-part 15.8 Price Negotiation. For contracts expected to exceed \$500,000, the Truth in Negotiations Act [P.L. 87-653] requires the submission of certified pricing data by contractors and subcontractors. There are three exceptions to this requirement:

- (a) adequate price competition;
- (b) catalog or market price of commercial items sold in substantial quantity to the general public;
- (c) set by law or regulation.

7. Part 16: Types of Contracts. The FAR allows freedom when selecting the particular contract type. This allows the procurement agency a flexibility in the procurement action. In emergency situations letter contracts may be a widely used instrument. Letter contracts are only authorized after the head of the contracting activity determines in writing that no other contract type is suitable.

8. Part 50: Extraordinary Contractual Actions implements emergency authority granted under P.L. 85-804 amended by P.L. 93-155 [50 U.S.C. 1431-1435]. Refer to Defense Resources Act. [Britt & Miles, 1985, pp 66-105]

Contracting professionals faced with a contingency contracting situation, as with any contracting situation, are burdened with countless laws and regulations. The above listing is a condensed version of the 66 code citations considered applicable in a national emergency. [Britt & Miles, 1985, p. 109] This listing is intended to give one an idea of those laws and regulations that place constraints on the actions of contracting professionals in a contingency contracting situation.

## **E. RELIEF FROM LAWS AND REGULATIONS**

Since the DoD may conduct their business in a wide variety of locations throughout the world, these laws may become too restrictive. Policy makers have legislated emergency authorizations and provisions to increase the powers of the President and Congress during a declaration of a National Emergency or War. Policy makers realized that the requirements and urgent need for supplies and services increases under these circumstances. The emergency authorizations and provisions exist under the following conditions:

1. "The Presidential declaration of national emergency. Unilateral declaration of emergency or executive order by the President as allowed by the National Emergencies Act of 1976, 50 USC 1631" [Proctor & Sanders, 1984, p. 68]. When there is a declaration of a national emergency adherence to the laws and regulations may be relaxed.
2. "Congressional declaration of national emergency. This action is envoked by a joint resolution of congress" [Britt & Miles, 1985, p. 109]. In general neither declaration changes the acquisition process, however, they may provide a means by which the process may be shortened.
3. "Joint Resolution of Congress to declare a State of War. This declaration is in accordance with Art. I, 8, Cl. 11 of the U.S. constitution". [Proctor & Sanders, 1984, p. 68] In a state of war the powers of the President and Congress are substantially expanded. However, this expansion of powers is not automatically invoked and not necessarily used.

### **1. Laws**

In a national emergency, the President has the authority to grant waivers or exceptions to nearly 70% of the procurement legislation. [Britt & Miles, 1985, p. 108-111] This means when a declaration of national emergency or war occurs, contracting organizations can make a reasonable assumption that as a result, shortened contracting and delivery times will follow. The decision on when to make a waiver or exception to a law is made several layers above that of the contracting officer. This effectively eliminates or reduces the input into the decision by the contracting officer, who is in the most need of the relief from the laws.

Routinely, a declaration of national emergency or war is not ordered in a contingency situation. Industrial surge is a more likely scenario in this situation. The state of declared readiness ordered dictates those requirements that will govern the contracting process in contingency situations. This captures the root of the problems associated with contingency contracting. Contracting professionals need to be prepared to identify and understand the laws applicable to various contingency situations so that they can support the mission efficiently and within the law.

## **2. Regulations**

The requirements in the FAR place just as many constraints on the acquisition process as some of the laws. However, the regulations tend to be more flexible than the statutes. This does not mean that during a contingency situation the regulations can be violated. It does mean that the FAR is designed so that even in peacetime when unusual requirements exist, relief from the regulations are available. This relief is in the form of waivers and deviations. Table 2.1 summarizes those regulations that may be waived.

[Busch, 1986, p. 6]

**TABLE 2.1**  
**REGULATIONS THAT MAY BE WAIVED**

REFERENCES	SUBJECT	EXCEPTIONS ALLOWED
5.201 (b)	Synopsis	Does not apply overseas
5.202 (a) (2)	Synopsis	Not applicable if unusual and compelling urgency exists
5.202 (a) (3)	Synopsis	International agreement specifies the source of supply
6.001 (a)	Competition	Does not apply to small purchases under \$25,000
25.102 (a) (1)	Buy American Act	Not applicable for items used outside the U.S.
25.392 (b)	International Balance of Payments Program	May buy foreign if under \$25,000
25.501	Payment in Local Currency	Foreign contracts should be priced and paid in local currency, unless C.O. determines it to be inappropriate
25.703 (a)	Restriction on Certain Foreign Purchases	Authorized to buy items from North Korea, Vietnam, Cambodia and Cuba in emergencies
37.107 (b) and DoD FAR Sup 37.104 (7)(e) (3)	Personal Services	Permissible pursuant to the national defense, requires J & A.

Generally, waivers to the regulations are granted at the contracting organization level or at the next level in the chain-of-command. In either case, waivers or deviations are granted at the same level or one level above the contracting officer. Because of this expectation that regulations can be waived, the contracting officer can reasonably assume that Procurement Administrative Lead Times (PALT) will be shorter as a result during a contingency situation.

## F. PREPARATION

This section will review the pre-deployment portion of a contingency situation. First it will focus on the difficulties contracting professionals face during the planning phase. This will be followed by a discussion of the types of tools available for use by contracting officials in contingency situations.

## **1. Planning Phase**

Thorough planning is important to the successful completion of any deployment outside the Continental U.S. (CONUS). From the warning order through the end of the exercise, the operations section is continuously making and updating plans. Operations plans can become quite detailed and require a tremendous amount of logistic support. Some of the logistic support is available through the organic table of equipment and the supply system. However, a substantial amount of logistics effort requires contracting support. The earlier the operators include the contracting professionals into the planning process the better the chances of a successful deployment.

Working closely with the planners during the inception of an operation is not easy. The matter becomes even more difficult when the contingency situation is "classified". Regardless of the nature of the contingency, early inclusion of contracting professionals is imperative. Legal, prudent, and timely buys cannot be made by contracting professionals when given insufficient time to develop a buying plan. This holds true whether the procurement is conducted during a deployment or in CONUS. [Busch, 1986, p. 36]

Conducting a site survey is important in the planning process for the operations officers and contracting officers. By surveying the country, the contracting officer can contact the U.S. Embassy, conduct market research, and meet with military counterparts prior to the start of an exercise. [Busch, 1986, p. 27] The embassy staff may be a valuable resource for a vendor list, local customs, local traditions, and an interpreter. Market research will help in developing fair and reasonable prices for supplies and services in the country. Sourcing may come directly from the military counterparts of the country. [Austin, 1991, Interview]

In peacetime procurement, the more we know about our supplier the greater the advantage we have in attaining a fair and reasonable contract. This attitude is just as important in contingency situations. When given the opportunity to conduct proper planning, contracting professionals are more prepared to contribute to the success of a deployment.

A more complicated contingency, in terms of providing contracting support, is an emergency or unplanned mission outside of CONUS. An example of an unplanned mission is the evacuation of American Nationals from Liberia and Somalia. Even though these contingencies are of an unforeseen nature, steps can be taken to prepare for such contingencies. Preparation in advance reduces the bending, and sometimes breaking of the laws and regulations during contingency situations.

Through advance preparation, some of the preconceptions and prejudices of foreign contractors by contracting professionals can be reduced. Educating the contracting officials to a country's customs and traditions may help eliminate the notion of the "ugly American" because of our lack of interest and knowledge of our foreign suppliers. [Long, 1990, p. 24-25] Despite what we as Americans believe, the average foreigners would just as soon do business without us.

Planning, as a part of the preparation phase, is important to the support that contracting professionals can provide in a "peacetime" contingency scenario. In a contingency situation, it is not always possible to conduct proper planning. However, this planning is necessary to avoid confrontations with vendors concerning language, traditions, and culture. If we accomplish the necessary education prior to a contingency, then we may be able to work within our laws without insulting the contractor or country that we are contracting with.

## **2. Tools**

As a result of the peacetime procurement system, contracting professionals are required to maintain detailed contract files. This holds true when contracting in a contingency situation. To help in the maintenance of these files during a contingency situation, tools are available to assist the contracting professional.

The primary tool developed for contingency contracting is the contingency contracting kit. Contingency contracting organizations need to develop and maintain kits that contain the proper elements to support a contracting professional in a contingency situation. This would be unlike Vietnam in which a sea bag full of money was the contingency contracting kit. [DiRenzo, 1990, Interview]

The time to develop contingency contracting kits is not during crisis action planning. The following statement supports this philosophy:

One should keep in mind that in a contingency operation, anything forgotten may be difficult to obtain once the area of operation is reached. The deployable contracting officer should, therefore, assemble or obtain a suitable deployment kit. The exact contents should be determined by the contracting officer after being informed of the overall contingency support mission. [Gilliat, 1987, p. 56]

As a part of the planning stage, the contents of contingency contracting kits need to be considered early in the preparation and continually updated. The kit may include ample supplies of all the required standard forms, language dictionaries, advance vendor lists, telephone books, and other pertinent equipment. One way of constructing a contingency contracting kit is by maintaining a library that contains such things as telephone books, language dictionaries, and other readily available items that can be assembled on the way out the door.

## **G. SUMMARY**

Before addressing how contracting professionals might best be prepared to meet the critical demands of a contingency contracting situation, it is important to understand the

evolution, the policy, the preparation issues, and the tools currently available to meet these demands. This understanding provides the basis from which to determine how contracting professionals might better be prepared to meet the demands of a contingency contracting situation. The contracting organizations within the DoD must be prepared to obtain supplies and services within the constraints of the laws and regulations in peacetime and under contingency situations.

Contingency contracting is governed by the same laws and regulations that govern peacetime contracting. Contracting officers will always wrestle with the problem of supplying their customer with the correct material in the correct quantity and, most importantly, on time, no matter the constraints.

Contingency contracting is no different in a lot of ways than peacetime contracting. One could say that laws and regulations hamper our procurement in a contingency situation. However, when the urgency of need is "I need it by tomorrow" the laws will always be a barrier. What it all boils down to is that for any procurement action, the more time spent in planning for certain types of situations, the more apt procurement can be made within the laws and regulations.

As the politics of the world have changed, so has the focus and location of the United States contingencies. The problem that develops because of this change is that current statutes and regulations that govern the procurement process pertain to peacetime. The DoD, by its nature, may not always develop requirements in a peacetime environment.

The military can be required to fulfill a variety of missions that require supplies and services. These missions could be of an immediate nature in foreign countries supporting armed conflict to training exercises in CONUS supporting drug interdiction. Does the

inflexibility of current statutes and regulations create barriers for contracting professionals in contingency situations? If so, by understanding these barriers and their effect on the procurement effort, the contracting professional can be better prepared for contingencies.

### **III. OPERATION DESERT SHIELD AND DESERT STORM**

#### **A. INTRODUCTION**

This chapter discusses the importance of the contracting function during Desert Shield and Desert Storm. Further, it describes the phases of contracting support during and after these operations. This chapter is divided into five sections. First, is the background of the events leading up to Desert Shield. The second section illustrates the contracting effort during the initial buildup of American forces in Saudi Arabia. The third section delineates a change in how contracting professionals did business to sustain the billeting, feeding, and training of the forces deployed to Desert Shield/Storm. The fourth section concerns contracting in support of the armed conflict known as Desert Storm. The fifth section discusses the ongoing contract closeout procedures and its problems.

#### **B. BACKGROUND**

As Iraq's Army easily overran the Kuwait resistance, Sadaam Hussein, Iraq's ruler, waited for the world's reaction to this aggression. With his army poised to continue on into Saudi Arabia, the whole world held its breath to see what would happen next. President Bush decided to stand up to this aggression. That stand was to "draw a line in the sand" and defend that line. This resulted in an immediate buildup of American troops and equipment on foreign soil.

The ensuing problem, as a result of this rapid and massive buildup, was that the material requirements of the U.S. forces in Saudi Arabia exceeded its sea and air lift

capabilities. Because of this problem, the responsibility to source these enormous material requirements in Saudi Arabia became that of the contracting professionals of the military services.

### C. DESERT SHIELD - THE BUILD-UP

#### 1. In The Beginning

Never before in recent experience have contracting professionals been faced with a task as large and ever evolving as Desert Shield. When the leading units were called upon to deploy to Saudi Arabia, by doctrine, these units carried enough food and equipment to sustain themselves for three days of combat. Existing sea and air lift could then provide the follow on material requirements for a sustained operation for this size force.

On 9 August 1990 no one anticipated that the size of the deployed force would grow at the rate that it did. Because of the daily increase of personnel and material, the requirements of the operation quickly exceeded U.S. lift capabilities. The contracting professionals deployed with these initial units were faced with a contracting situation in which a tremendous amount of requirements would have to be met in a very short time. They were faced with a "hand-to-mouth" contracting situation. [Gilliat, 1991, Interview]

The initial decision to deploy troops to Desert Shield happened so quickly that funds were not authorized for the procurement of supplies and services. In order to overcome this obstacle, the Food and Forage Act was used as the legal means to begin the

contracting effort in Saudi Arabia. [Gilliat, 1991, Interview] The language of the Food and Forage Act was identified in an earlier study conducted by Proctor and Sanders:

...the language of the provision (Food and Forage Act) is broad and can be interpreted to cover a wide array of unappropriated expenditures....For example, the transportation provision may be used to a large extent to cover repair, maintenance and overhaul of vehicles...and the operations of ports and terminals....Fuel supplies may encompass both heating and transportation fuels....Quarters expenditures may include construction and operation of BEQ's. [Procter & Sanders, 1984, p. 113]

The Food and Forage Act is where the authorization for procurement of supplies and services for Desert Shield is derived. The contracting procedures used to meet these demands during Desert Shield, however, fell under the same constraints as any other peacetime operation. The absence of a declaration of National Emergency or War, as discussed earlier, meant the President had no authority to waive laws or regulations that would have provided relief and expedited the contracting process.

Fortunately, the increase to the threshold limitations of SF 44's, provided some relief for contracting professionals. This relief was mainly in the form of shortened procurement lead times in the early stages of the operation. The increased threshold of the SF 44 initially made it a popular form of procurement, "75% of all items procured were done via Standard form 44." [Covelli]

Establishing Sources Of Supply (SOS) became the first priority for contracting professionals. Unfortunately, contracting professionals were not given an opportunity to properly develop contingency contracting plans or conduct site surveys prior to deployment to Saudi Arabia. This meant that before the needs of the troops could be satisfied, contracting professionals needed to attend to their own requirements first. Additionally, early on, the vendors were able to take advantage of an abundance of buyers. This resulted in the Services and allies competing with one another for SOS leading to premium prices being paid for supplies and services.

## **2. Establishing Contract Support**

Selfish as it may seem, the first requirements that needed to be satisfied were those of the contracting professionals. Without the primary necessities such as transportation, communication, money and an office they could not effectively conduct business.

Transportation was an immediate requirement for the contracting professionals to begin to locate vendors for the supply base. Initially, the vendors could be found in telephone books, but the majority of them were discovered simply by getting out into the business sector and tracking them down. Renting or leasing vehicles became the method of choice to fulfill the transportation needs. [Marchesano]

Communications with vendors was also an important element. Time could be saved by contacting vendors over the phone. Establishing a reliable communication system was not as simple as transportation. Cellular phones were an easily attainable means of communication for many of the contracting professionals. However, for several reasons, cellular phone use was cost prohibitive for most offices. By providing office buildings and telephone lines, the Saudi Arabian Government made U.S. contracting organizations readily accessible to the vendors making communications less of a problem. [Corcoran, 1991, Interview]

Having cash money available for immediate disbursement was a key to success during the initial phases of Desert Shield. The person who controlled the money, controlled the effectiveness of the contracting effort during Desert Shield. Those contracting professionals who deployed to Saudi without a Disbursing Officer (Finance and Accounting) were severely handicapped. Because not all Saudi businessmen were accustomed to our contracting procedures, they were not ready to accept a piece of paper

(Purchase Order (PO)) in lieu of cash. Therefore, the contracting professional that could write a SF 44 and have it disbursed immediately by a class A agent had the most success. [Austin, 1991, Interview]

Finally, as it turns out the most important requirement that a contracting professional had, if security permitted, was to establish an accessible office (preferably in the public sector). Unbeknownst at the time, once an office became operational the contracting professionals did not need to search for vendors. Vendors could now come to the contracting office seeking work. Something as simple as an accessible office location began to change the nature of the contracting function. An office meant that a contracting professional spent less time finding sources and more time awarding contracts. [Austin, Corcoran, 1991, Interviews]

### **3. Requirements Determination**

The next challenge was meeting the requirements of Desert Shield. The immediate deployment of men and material to Saudi Arabia found many commands unprepared to establish bivouac sites for an operation the size of Desert Shield. Determining requirements to establish such sites became a challenge. The size was not the only obstacle. Without a HNS Agreement, Memorandum of Understanding (MOU), or Status of Forces Agreements (SOFA), supplies and services that may have otherwise been provided under such agreements, were not. Without an agreement between the U.S. Government and Saudi Arabia, the planners had to contract for virtually everything in order to establish camps. [Corcoran, 1991, Interview]

There was an enormous effort required to setup billeting, messing, and sanitary facilities plus procuring supplies to support the defense of Saudi Arabia. To effectively and efficiently construct these base camps, the requirements determination process became overwhelming. Requirements became a moving target, resulting in the need for

ever increasing quantities and services. For example, imagine planning for an influx of personnel that on an average increased by 1,000 to 2,500 men a day, culminating in nearly 250,000 men in less than 45 days. Contracting professionals involved themselves in this effort, many times making the request and awarding the contract themselves. For most contracting professionals this was a new experience. [Corcoran, 1991, Interview][Covelli]

#### **4. Meeting the Requirements**

With the enormous buildup of forces and equipment, contracting professionals experienced an exponential increase in the demands placed on them to provide supplies and services in support of the mission. [Covelli] Water became the most important requirement that needed to be filled early on. Other important requirements were such things as restroom facilities, trash removal, gravel, POL (petroleum, oil and lubricants), bedding (sheets, pillows and blankets), messing facilities, cleaning supplies, etc. [Austin, 1991, Interview]

Contracting professionals were faced with a host of challenges because of the instability of the requirements and the increased interface with the customers. These challenges resulted in problems such as identifying quantities, educating the commander/customer, and determining workforce size/composition. [Corcoran, 1991, Interview]

To start with, providing supplies and services in sufficient quantities was a challenge because of the fluid nature of the situation. For example, a PO could be put in place today to provide enough portable restroom facilities (porta-jons) for 1000 personnel. However, by tomorrow the quantity requirement for porta-jons may have increased two or three times for the same service. [Austin, Corcoran, 1991, Interviews]

Due to the nature of the situation, more people had direct interface with the contracting function than would normally be the case during training exercises. In most cases the average commander/customer had not worked as close with a contracting office as they did during Desert Shield. Therefore, as can be expected, conflicts occurred when a procurement action did not get filled as fast or awarded to the vendor that the commander/customer wanted. Therefore, valuable time was spent educating commanders/customers concerning the contracting function. [Corcoran, 1991, Interview] [U.S. Army Forces Central Command, 1991, Memorandum]

Determining the size and composition of the contracting teams to send to Southwest Asia (SWA) was a difficult task. Determining what rank, size warrant, and size of the contracting organization required to provide support, was complicated by not being able to accurately calculate the number of troops deploying. [U.S. Army Forces Central Command, 1991, Memorandum]

### **5. Culture, Customs, and Traditions**

In Saudi Arabia, the language was not a barrier to procuring supplies and services. But, the culture, customs, and traditions were definite barriers. This was the area of contingency contracting that placed contingency contracting professionals in the most uncomfortable positions. For example the common custom of completing a business deal with some form of a gratuity violates the standards of conduct. The act of turning down the gratuity was an insult to the vendor and the contracting professional may loose the vendor. However, the Saudi Arabian business community began to accept the contracting professional's position and this became less of a problem. [Austin, Corcoran, 1991, Interview]

Religious practices were a problem initially. To solve that problem, business hours were structured around their worship schedule. Eventually as contracting professionals understood the worship schedule, they could work around it. The religious practices were harder for the commanders/customers to accept. [Corcoran, 1991, Interview]

The contracting professionals were able to adapt to the challenges faced during the build-up for Desert Shield. Despite the combination of diverse requirements and the maligned understanding of the nature of contracting laws and regulations, contracting professionals managed to provide critical support when needed. Eventually the continuous flow of men and material to SWA declined. This resulted in a change in the contracting function from a contingency contracting situation to a "base or field" contracting operating under constant "urgent" or "compelling" situations. [Gilliat, 1991, Interview]

#### **D. DESERT SHIELD - SUSTAINING THE OPERATIONS**

The shift to a base or field contracting situation was the result of the following events:

##### **1. Raising of the Small Purchase Threshold**

The increase of the small purchase threshold during October of 1990 significantly changed the contracting function during Desert Shield. A result of this change was that it was easier to transition from the hand-to-mouth contracting to a base contracting environment. By extending the limitation for small purchases to \$100,000, a major portion of formal contracting was effectively eliminated. Additionally, this action increased the competition threshold from 10% of \$25,000 or \$2,500, to 10% of \$100,000

or \$10,000. Therefore, procurement, using simplified small purchase procedures less than \$10,000, did not require competition, making the SF44's an even more popular procurement tool.

The lead times were also reduced as a result of this action. The reduction of PALT by more than half of the PALT at CONUS contracting installations is an example of the effect. The following quote from an end of tour report, submitted by a contracting professional deployed to Saudi Arabia, emphasizes such a decrease: "We established a PALT time of 3 days for priorities and 30 days for routine. We averaged 1.8 days for priorities and 7.3 days for routines" [Covelli]. A reasonable PALT for CONUS procurement activities is anywhere from 18 to 21 days.

As pointed out earlier in this chapter, the amount of men and material coming into the country was beginning to diminish. This effected the organization of the procurement process. The result of this effect was that the contracting professional could begin to operate in a near normal base contracting environment—realizing that near normal base contracting takes into consideration that an attack from Iraq was still considered to be imminent.

## **2. Organizing Into Base Contracting Offices**

Along with the change to the small purchase threshold, several other events allowed contracting organizations to move towards establishing a base contracting type operation. Since the requirements were beginning to stabilize and the contracting workforce began to equal the workload, time could now be spent on improving the contract support. Improving support meant developing a structured organization. Contracting organizations began to setup offices that mimicked base or field contracting procedures used in CONUS. [U.S. Army Central Command, 1991, memorandum] This improved service to the customer. Additionally, contracting organizations were able to

concentrate on improving the purchase request, source selection, and contract administration process. As procedures were established and disseminated to their customers, the contracting function became more efficient and manageable.

Further evidence that a transition to base contracting was in its genesis was the way in which the source selection process changed. Contracting organizations were not required to advertise in the Commerce Business Daily (CBD) because they were procuring supplies and services outside of CONUS. Advertising Requests for Proposal (RFP)/Invitations for Bid (IFB) was still a valid way to insure competition, if time permitted. The general practice for advertising was to establish a "bid board." The bid board was divided by commodity and RFP's/IFB's would be posted so that the vendors could easily review them and submit their offers. The advertising periods were abbreviated to accommodate the urgency of the situation and the dollar value of the award. For example, a priority requirement may be advertised for 24 hours; a routine requirement with a dollar value less than \$500,000 may be advertised for six days.

[Corcoran, 1991, Interview]

During the transition to a base contracting environment, the consolidation of requirements or expected requirements allowed contracting organizations more freedom to decide on the type of contracting method to use. Small purchase procedures allowed the contracting organizations the time to make transition and to begin to establish historical usage data. These data allowed contracting professionals the ability to better match the contracting action to the requirements. Requirements contracts and Blank Purchase Agreements (BPA's) became an effective method of satisfying the repetitive nature of the material requests. An example is the requirement for sandbags that never came by ship. The first fixed price contract was awarded for one million sandbags with the assurance that one of the supply ships had them aboard. After another contract was

awarded for another million sandbags, a requirements contract was established for an indefinite quantity. Before the end of the war, more than six million sand bags were delivered against that contract. [Corcoran, 1991, Interview]

The transition of contracting organizations from the contingency contracting situation to more of a base contracting situation was the result of a variety of factors. The duration of the operation, the size of the acquisition workforce, the formalization of the procurement process, and the changing nature of the requirements contributed to this transition. Finally, the creation of a HNS provided further stabilization of the procurement process and continued transition towards a base contracting situation.

### **3. HNS Agreement**

Initially the HNS Agreement did not exist between the U.S. and Saudi Arabia. The Central Command (CENTCOM) Logistics (J4) staff in conjunction with the Joint Chiefs of Staff (JCS) negotiated with the Saudi Arabian Government to put into place a process for the HNS Agreement. The outcome of this negotiation was an agreement that became effective on 1 November 1990.

The HNS Agreement stipulated that the Saudi Arabian Government would provide support in the areas of facilities, food, water, fuel, and transportation. Further, the HNS would reimburse the U.S. for \$760 million equating to the outlays incurred in these four areas for the period from August to October 1990. [CINC, CENTCOM, 1990, Message] It appeared that the HNS Agreement, if implemented, could save contracting organizations valuable time that could be better spent to support the war effort.

However, the implementation of the HNS Agreement became quite an ordeal. The intentions of both parties in establishing the HNS Agreement were good, but the

agreement that CENTCOM established has yet to be signed by the Saudi Arabian Government, which is a common occurrence in this part of the world. [Corcoran, 1991, Interview]

Despite the initial problems of the HNS Agreement, most contracting organizations tried to comply with the direction of the instructions implementing the HNS Agreement, the Implementation Plan for Logistical Support. The plan basically directed novation agreements for contracts that were already awarded and that the Saudi Arabian Government would establish any new contracts in the four categories. Eventually, the contracts that were identified in these categories became the responsibility of the Saudi Arabian Government.

Unfortunately the HNS Agreement was never implemented as intended. Contracting organizations either implemented the plan for all, part, or none of their contracts. The problems surrounding the HNS Agreement are too numerous to list here. Suffice it to say that those organizations that implemented the plan on all their contracts did benefit; and the time saved was used in other areas of the contracting functions. [Corcoran, 1991, Interview]

## E. DESERT STORM

The old adage that "when the bullets begin to fly you will get what you want regardless of the regulations" was not the case during Desert Storm. Without a declaration of war or national emergency, contracting organizations were obligated to follow the laws and regulations of a peacetime acquisition system. Generally, contracting professionals during this time were able to use the laws and regulations to the fullest extent possible and provide the critical supplies and services that helped make Desert

Storm a success. This may have meant that everything was urgent and compelling. Therefore, contracting professionals became quite adept at writing Justifications and Approvals (J&A) during the operation. [U.S. Army Central Command, 1991, memorandum]

The beginning of the air war brought new challenges for contracting organizations. Probably the most unexpected is the defection of the Third Country Nationals (TCN) from the workforce. As the bullets began to fly, bus drivers, truck drivers, and general laborers began to leave Saudi Arabia for fear of their well being. This left vendors, in some cases, unable to perform. To counteract this problem, clauses were created to protect the U.S. Government's interests. One such clause that the Army used made provisions that U.S. personnel could replace TCN drivers who abandoned their vehicles. Another creative technique was to build in a performance incentive payment.. If the driver drove one day and returned the following day, he would be paid a bonus. [Corcoran, 1991, Interview]

As the ground war grew closer, so did the requirement to support maneuver elements in Iraq and Kuwait. The Army sent contracting professionals to provide this support. The ground war once again changed the contracting environment:

...I constantly operated independently...full and open competition was often difficult. In the middle of the desert, in a war zone, competition is often a pipe dream. Further, moving away from the cities meant I was dealing with very traditional Arabs whose concept of hospitality ran against integrity and ethics rules. [Hedrick, Survey]

The liberation of Kuwait and Iraq's eventual surrender ended Desert Storm. Shortly after the cessation of hostilities, the re-deployment of units began. As more and more personnel left the country, the requirement for supplies and services slowly began to diminish. Despite the reduction in requirements, the contracting professionals' toughest job was yet to come. That was the job of closing out the multitude of contracts awarded to support Desert Shield and Desert Storm.

## **F. CLOSEOUT**

Contract closeout can be extremely difficult and time consuming. Therefore, it can be assumed that having to closeout contracts in a foreign country following an armed conflict is even more difficult. The combination of the large quantity of terminations, the uncertainty of claims, entitlement, and the failure of the HNS Agreement complicated the closeout process even further.

Desert Storm ended with most contracts in the middle of their performance period. Stopping work and terminating these contracts became the first priority. As can be expected, there was a large number of outstanding contracts to be terminated for convenience. For the most part, contracting organizations were beginning to reduce manpower at this time which made this administrative task even more burdensome. As the number of terminations increased, the chance of claims from terminated contractors also increased.

Claims from terminations are normally predictable and controllable at the contract organization. However, that is not the case for any other claims that may be brought against the U.S. Government for several reasons. First, the confusion created by the weak HNS Agreement and how it was established left vendors not really sure who to contact for payment. This is especially true for those contracts that were novated. Second, because of the poor payment record of the Saudi Government, many vendor's went to the U.S. Government Agencies first. Finally, for some vendors, the armed conflict to liberate Kuwait was their ticket to increased wealth. This complicated the claims process. This meant the contracting professionals had to decide between legitimate and fraudulent claims. [Corcoran, 1991, Interview] Submission of Claims against the U.S. Government is ongoing at this time and there is no real end in sight for settling these claims.

To further complicate the settling of claims is the fact that the HNS Agreement was never signed. Because the Saudi Arabian Government historically has had a poor track record for paying their bills, many vendors sought relief through claims to the U.S Government. Determining who is responsible for disbursement is also an ongoing process. Until the Saudi Arabian Government lives up to the terms of the HNS Agreement, the closeout process will continue to be long and difficult. [Corcoran, 1991, Interview]

This thesis does not attempt to review the contract closeout phase. However, there are significant problems in the process that require a sizeable number of contracting professionals to remain in Saudi Arabia. A snapshot view of these problems has been provided since very little in the current literature addresses this portion of contracting in a contingency situation.

#### **G. SUMMARY**

This chapter has attempted to provide an understanding of the continuously evolving Middle East contracting situation from 9 August 1990 to December 1991. The tasks that faced contracting professionals deployed to SWA were formidable. At first, contracting was accomplished to meet the immediate requirements. Eventually, the nature of the contracting situation changed and became more of a base "urgent" contracting situation. It was not that requirements placed on contracting professionals lessened, but that minor relief was provided both from the regulations and statutes. Finally, the closeout procedure has become as big a task as the buildup. The opinions of contracting professionals with contracting experience in Desert Shield/Storm are discussed in Chapter IV.

## **IV. QUESTIONNAIRE RESULTS AND ANALYSIS**

### **A. INTRODUCTION**

The return of more than 200 contracting professionals from SWA was a result of Iraq's surrender following Desert Storm. With this return, an opportunity became available to exploit the knowledge and experiences of contracting professionals with recent contingency contracting experience. Prior to the buildup of American forces during Desert Shield, there were a limited number of contracting professionals that actually had contingency contracting experience. At best, these contracting professionals ordered to SWA to provide contingency contracting support, read and understood their individual Service directives related to contingency contracting. With this guidance and understanding of contingency contracting, these contracting professionals provided instrumental support during Desert Shield and Desert Storm. Now that the redeployment of equipment and personnel from SWA is nearly complete, this signals an end to one of the largest contingency contracting efforts in recent memory.

The most recent studies on contingency contracting were completed within the last three to five years. The first major test of the conclusions and recommendation found in this literature is the SWA deployment. This survey was undertaken to evaluate the effectiveness of the preparation identified in the literature [Gilliat, Walsh, Busch, Ellington], with the knowledge and experiences gained by contracting professionals in SWA.

### **B. SURVEY BACKGROUND**

Before developing a survey, it was necessary to determine what was going to be measured. Satisfying the objective of this study through identification of the critical

demands of contingency contracting situations is difficult. Just identifying a clear and concise definition of contingency contracting leads to confusion and disagreement. Contingency contracting is defined in a variety of ways throughout the literature. The following definition (identified in Chapter I) is the most widely used in the literature:

...contracting performed in support of peacetime contingencies on an overseas location pursuant to the policies and procedures of the Federal Acquisition Regulation [JCS Pub 1-02, 1989, p. 86]

Defining contingency in combination with the above definition is helpful to evolve the critical demands of contracting in contingency situations. The term contingency is also varied throughout the literature. The following definition of contingency gets to the root of its applicability to contracting situations:

Contingencies are deployments to overseas theaters in response to a crisis or actual declaration of war. It does not include emergency...in support of a CONUS base...it is safe to assume the control over and the use of appropriated funds would be different if war were being fought on American soil. Secondly, many regulatory requirements are not applicable overseas.... [Busch, 1986, p. 2]

Identifying a contingency contracting situation is not always clear. As a result of the earlier studies and inconsistencies when identifying contingency contracting situations, it was decided to ask experienced contingency contracting professionals to express their views of the critical demands of contingency contracting. Specifically, what was the quality of their preparation for contingencies; and what improvements could be made to help them in their preparation for contracting in a contingency situation. To accomplish this, the survey was organized around four areas. These four areas are:

1. Defining the critical demands of contingency contracting situations.
2. Determining the effectiveness of current preparation for contingency contracting.
3. Determining the effect laws and regulations play in the preparation for contingency contracting.
4. Identifying those tools that did or could have made contracting easier in a contingency situation.

The survey is contained in Appendix A. The questionnaires were sent to contracting professionals deployed to SWA from the Air Force, Army, and Marine Corps.

All of the services deployed contracting professionals to SWA. The Navy's contracting professionals were excluded from the survey because, for the most part, the Navy had major contracting commands relatively close to their area of operation for contracting support. Additionally, when the Navy deployed contracting professionals to SWA, contracting had moved from a contingency environment to an "urgent" base contracting situation.

In order to elicit the respondent's honest response, they were given the opportunity to return the questionnaire with disclosure of their name as an option. It was determined that the honesty of the information to be gained over requiring the name for purely administrative reasons was overshadowed by the need for truthful and complete answers.

Four steps were used to analyze the questionnaires. First, they were all categorized by respondents with a contracting officer's warrant and those without. This was done to determine if opinions changed as a function of being warranted or as a function of the nature of that warrant (i.e., length and limit). Second, questions were analyzed by time in service and education level. The purpose of this was to determine if opinions changed as a result of experience or education level. Third, the questions with definite quantifiable responses were analyzed by using a frequency distribution or an arithmetic average of the responses. Fourth, the indefinite responses and comments were reviewed for content. These four methods were used to generate the results described in the next section.

### C. SURVEY RESPONSES

Of the 193 surveys sent to the contracting agencies of Central Command and its subordinate commands, 81 were returned (a return rate of 41.97%). Due to the universal

nature of the questions on the survey, many respondents chose not to answer all the questions. This results in totals and frequencies that do not consistently add up to 81.

### 1. Demographic Data

Section I of the survey was developed to construct background data of the respondents.

#### a. *Section I - Question 2: Rank*

The rank of the respondents ranged from pay grade E - 4 to O - 6. Over 54% of the workforce was enlisted. Additionally, three civil servants responded to the survey.

Table 4.1 provides the results.

TABLE 4.1  
EXPERIENCE: RANK

Rank	Absolute Frequency	Relative Frequency (%)	Cumulative Frequency (%)
E - 4	7	8.7	8.7
E - 5	13	16.0	24.7
E - 6	11	13.6	38.3
E - 7	11	13.6	51.9
E - 8	1	1.2	53.1
E - 9	1	1.2	54.3
O - 2	4	4.9	59.2
O - 3	7	8.7	67.9
O - 4	15	18.5	86.4
O - 5	7	8.7	95.1
O - 6	1	1.2	96.3
GM/S - 11	1	1.2	97.5
GM/S - 13	2	2.5	100.0
Total	81	100.0	100.0

Time In Service (TIS), length of current assignment and level of education is useful to provide a basis to determine if a relationship exists between the experience level and how prepared the respondents were for contracting in Desert Shield/ Storm.

*b. Section I - Question 3: Time in Service*

TIS ranged from just under four years to 25 years with 66.7 percent having greater than ten years of service. Table 4.2 shows the results.

**TABLE 4.2**  
**EXPERIENCE: TIME IN SERVICE**

Range (Years)	Absolute Frequency	Relative Frequency (%)	Cumulative Frequency (%)
0 - 5	10	12.3	12.3
5 - 10	17	21.0	33.3
10 - 15	16	19.8	53.1
15 - 20	27	33.3	86.4
Over 20	11	13.6	100.0
Total	81	100.0	100.0

On-the-job training prepares contracting professionals to meet the demands of contracting in normal conditions. This analysis attempts to determine if this training translates into experience that prepares them for the demands of contracting in a contingency situation.

*c. Section I - Question 5: How Long Have You had This (Current) Position?*

The current job experience of the respondents ranged from as little as two months to over 96 months (8 yrs). The results are shown in Table 4.3.

**TABLE 4.3**  
**EXPERIENCE: LENGTH OF CURRENT POSITION**

Range (Months)	Absolute Frequency	Relative Frequency (%)	Adjusted Frequency (%)
0 - 12	20	24.7	25.3
12 - 24	22	27.2	27.8
24 - 36	21	25.9	26.6
Over 36	16	19.7	20.3
No Response	2	2.5	Missing
Total	81	100	100

Experience is also a function of educational level. Part of this analysis was to examine how the level of education played when preparing for contracting during a contingency situation.

*d. Section I - Question 9: Highest Level of Education Completed*

Those who had a bachelors degree or better constituted 51.8% of the respondents and all of the respondents have at least completed High School. The results are given in Table 4.4.

**TABLE 4.4  
EXPERIENCE: EDUCATION LEVEL**

Response	Absolute Frequency	Relative Frequency (%)	Cumulative Frequency (%)
High School or Equivalent	5	6.2	6.2
Some College or Associates Degree	34	42.0	48.2
Bachelors Degree	29	35.8	84.0
Advanced Degree	13	16.0	100.0
Total	81	100.0	100.0

The next three questions are designed to help understand the contracting officer's warrant and its relation to the preparedness of the respondents.

*e. Section I - Question 6: Do You Have a Contracting Officer's Warrant?*

This forms a basis to determine if respondents with a warrant felt more prepared for the contracting conducted during Desert Shield/Storm than those without. There were 59 warranted contracting officers. The results are shown in Table 4.5.

**TABLE 4.5  
EXPERIENCE: LENGTH WARRANTED**

Response	Absolute Frequency	Relative Frequency (%)	Adjusted Frequency (%)
Warranted	59	72.8	73.8
Not Warranted	21	25.9	26.2
No Response	1	1.2	Missing
Total	81	99.9	100.0

The length of time a contracting professional is warranted reflects the experience of actually writing contracts.

*f. Section I - Question 7: How Long Have You had This Warrant?*

Those with 24 months of experience or less constituted 64.4 percent of the respondents while those holding a warrant for over three years made up almost 20 percent of the respondents. The results are shown in Table 4.6.

**TABLE 4.6**  
**WARRANT: LENGTH WARRANTED**

Response (Months)	Absolute Frequency	Relative Frequency (%)	Adjusted Frequency (%)
No Warrant	22	27.2	N/A
0 - 12	19	23.4	32.2
12 - 24	19	23.4	32.2
24 - 36	5	6.2	8.5
Over 36	16	19.8	27.1
Total	81	100.0	100.0

Finally, the limitations assigned to each warrant impacts the types of situations that a person would have to be prepared for in a contingency contracting situation. Particularly when comparing the differences between simplified small purchase procedures and formal contracts.

*g. Section I - Question 8: What are the Limitations of Your Warrant?*

Nearly 40 percent of the respondents possessed an unlimited warrant. The results are given in Table 4.7.

**TABLE 4.7**  
**WARRANT: LIMITATIONS**

Warrant Limit Group (\$; K=Thousand)	Absolute Frequency	Relative Frequency (%)	Cumulative Frequency (%)
No Warrant	22	27.1	27.1
0 - 25K	13	16.0	43.1
25K - 100K	5	6.2	49.3
100K - 500K	6	7.4	56.7
Over 500K	3	3.7	60.4
Unlimited	32	39.6	100.0
Total	81	100.0	100.0

There are several general characteristics that are evident when the data are segregated by the limits placed on contracting officer's warrant and combined with the demographic data into one table (Table 4.8). First, as might be predicted, the educational level of the contracting professionals with unlimited warrants is the highest of all the respondents. Additionally, contracting professionals with a warrant have an educational rating of 2.7 compared to those without a warrant at 2.3.

Second, those with contracting officer warrants have both been in the service and at their job the longest. Of the warranted contracting officers, the average time in service is 14.9 years and the length of time in their current position is 27.9 months. Compare this to 11.2 years TIS and 27.3 months in the current position for those contracting professionals without a warrant.

**TABLE 4.8**  
**COMBINED DEMOGRAPHIC DATA**

Warrant Limit Group (\$; K=Thousand)	Number of Responses	Average Years in Service	Average Months in Position	Average Education Level*
No Warrant	22	11.2	27.3	2.3
0 - 25K	13	12.3	22.2	2.1
25K - 100K	5	13.0	29.4	2.6
100K - 500K	6	15.2	29.3	2.5
Over 500K	3	19.0	24	3.7
Unlimited	32	15.4	28.3	3.1
Total	81	13.9	27.3	2.6

\*1=High School; 2=Some College;  
3=Bachelors Degree; 4=Advanced Degree

## 2. Critical Demands

In order to develop a better understanding of what the critical demands of a contingency contracting situation are, the survey first wrestles with the respondents' understanding of the definition. Section II of the questionnaire defines contingency contracting using the Department of Defense Dictionary of Military and Associated Terms. The follow on questions try to determine if the respondents agree or disagree with that definition and they are given an opportunity to provide any comments regarding the definition.

Department of Defense Dictionary of Military and Associated Terms defines contingency contracting as:

...contracting performed in support of peacetime contingencies on an overseas location pursuant to the policies and procedures of the Federal Acquisition Regulation [Joint Pub 1-02, 1984, p. 86]

*a. Section II - Question 1a: Do You Agree or Disagree With This Definition?*

As shown in Table 4.9, 70.3% of those responding disagree with the current definition of contingency contracting. This is an indication of the contracting professionals' struggle to identify the critical demands of a contingency contracting situation.

**TABLE 4.9**  
**DO YOU AGREE OR DISAGREE WITH THE**  
**DEFINITION OF CONTINGENCY CONTRACTING?**

Response	Absolute Frequency	Relative Frequency (%)	Adjusted Frequency (%)
Agree	23	28.4	28.75
Disagree	57	70.4	71.25
No Response	1	1.2	Missing
Total	81	100	100

To provide the respondents with an opportunity to improve the definition, the following question was asked:

**b. *Section II Question 2b: If You Disagree, or Feel That Some Changes Should be Made to the Definition, Please Provide Your Comments.***

This question generated a substantial amount of comments from those that disagreed with the definition of contingency contracting as it is defined above. The comments made by those that disagreed fell into two basic categories.

1. The use of "peacetime" in the definition is not appropriate, citing that Desert Storm was not a "peacetime" environment.
2. Contracting conducted in CONUS for the purpose of emergency or disaster relief, constituted contingency contracting.

Those respondents, who agreed with the definition, also made comments to help improve the definition. Even though they agreed with the definition, a majority of the respondents who agreed with the definition fell into the same two categories as those that disagreed. However, the following comments are an attempt to explore the roots of a more complete definition of contingency contracting.

I agree...if every situation is considered peacetime when there is no declaration of war....

...as long it is understood that the "contracting" includes the efforts required to get units/supplies/equipment to the contingency sites.

The responses to this question begins to shape the critical demands of the contingency contracting situation. When identifying these demands, it may be useful to evolve a more widely acceptable and understandable definition of contingency contracting.

### **3. Effectiveness of Current Preparation**

The questions in Section III focus on three areas of the preparation phase. First, the effectiveness of the preparation and planning that contracting professionals underwent prior to Desert Shield/Storm. Second, the effect, if any, that peacetime procurement laws have on contracting during Desert Shield/Storm. Finally, Section III ends with a discussion of those contracting tools used in contingency contracting situations.

Training contracting professionals for contingency contracting is rarely accomplished after the basic procurement course. Service directives (i.e., AFR 70-7) and handbooks (i.e., Wartime Contingency Contracting Handbook) provide instruction and guidance to assist contracting professionals to prepare for contingency situations. This section begins to explore the adequacy of this preparation.

#### **a. *Section III - Question 1a: How Well Were You Prepared for Your Recent Contingency Contracting Experience?***

Almost 62% of the respondents felt that they were prepared or nearly prepared for contracting during Desert Storm/Shield. The results presented are seen in Table 4.10.

**TABLE 4.10**  
**HOW WELL WERE YOU PREPARED**  
**FOR CONTINGENCY CONTRACTING?**

Level of Preparedness*	Absolute Frequency	Relative Frequency (%)	Adjusted Frequency (%)
1	22	27.2	27.5
2	28	34.6	35
3	14	17.3	17.5
4	10	12.3	12.5
5	6	7.4	7.5
No Response	1	1.2	Missing
Total	81	100	100

\*1 = prepared; 5 = not prepared

By separating demographic data by the levels of preparation indicated by the respondents into one table (Table 4.11), some general characteristics become evident. As might be expected, those that felt most prepared had the highest averages in all four categories and those that felt least prepared had the lowest averages. Level of preparedness four is really an exception to what might be expected. To some extent this exception can be explained; because the average rank of the group is the highest, the education level is logically higher and TIS is logically lower.

**TABLE 4.11**  
**PREPARATION: A COMPARISON**

Level of Preparedness <sup>1</sup>	Average Education Level <sup>2</sup>	Average Years in Service	Average Rank <sup>3</sup>	Average Months Warranted
1	2.8	15.3	8.0	35.1
2	2.7	15.2	9.1	26.6
3	2.5	13.3	8.9	31.2
4	3.0	11.7	11.1	22.6
5	2.2	10.0	6.0	08.0
Mean	2.6	13.9	8.8	28.54

1. 1 = prepared; 5 = not prepared

2. 1=High School; 2=Some College; 3=Bachelors Degree; 4=Advanced degree.

3. 1=E-1, 2=E-2,..., 15=O-6.

After determining the level of preparedness for contracting during Desert Shield/Storm, Question 1b was designed to provide feedback from the respondents on where they felt their preparation could be improved.

***b. Section III - Question 1b: Provide Comments on Areas of Contingency Contracting That You Could Have Been Better Prepared for During Normal Operation Tempo?***

A minority of respondents indicated they were completely prepared. Of the respondents who commented on this question, their responses could be divided into five basic categories. These categories and representative comments are listed below:

1. The agencies within the Department of State (i.e., embassies), Commerce and Defense, as well as Industry Associations need to be identified during preparation to provide sourcing information, security information, and cultural information.

Brief with the State Department or Theater Operations Security Officer before being sent in to brief (theater) field commander on resources available.

2. Commanders need to be educated on how to better manage the contracting function.

More interaction with other base functions as to their wartime needs. Educating commanders on the importance of contracting to their overall success, especially that the contracting Staff should be allowed the most flexibility in performing their job.

3. Service peculiar workforce policies. (i.e. NCO's are restricted from contracting in CONUS, but were called upon to contract in Desert Shield).

I could be better prepared if the Army would have a designated contracting for the enlisted soldier.

NCO's are not normally in the contracting process. I was assigned to assist the command during a great need. I had to learn "on-the-job." This field should be opened to NCO's with a warrant to provide smoother transition during peacetime and times of need.

4. General contracting issues such as:

- a. Formal contracting skills were deficient.

Formal contracting experience is a must. The small purchase limitation is also a barrier for knowledge. I didn't know anything about purchases over \$25k.

- b. Small purchase procedures, in particular SF 44 use was deficient.

Though I quickly learned, I could have been more versed in the proper use and execution of SF 44. These are uses for on-the-spot over the counter purchases of supplies and non-personal services while at isolated activities.

Greater exposure to small purchase requirements and training in field ordering officer utilization. I had never heard of an SF 44 prior to arrival in SWA.

- c. Prepare blank contract formats/Sample contracts prior to deployment.

. . . 2. pre-prepared solicitations. 3. Boiler plate "statements of work" or purchase descriptions. 4. Market survey of deployment area.

Sample contract formats: i.e., custodial/mess hall bussing/cleaning. BPA formats carried in CC kit were adequate. Quality Assurance Evaluations (QAE) packages, appointment letters, QAE briefing letters for training QAE's. Inspections & report forms for QAE documentation of performance.

- d. The pre-award phase requires more emphasis in Site Surveys/Market Surveys/Statements of Work.

Market surveys should have been done in the locations in our area of operations prior to the deployment of US forces. Data obtained during the surveys are based on projected requirements or actual supplies and services contracted during CONUS or Non-CONUS exercise.

Host nation support agreement with the host country. Market surveys of the area by Civil Affairs Group. Pre-deployment site survey by KO at various levels. Projected shortfalls of supported units.

5. Cultural, language, and religious differences presented problems.

I was trained for stateside contracting, but due to the differences in our overseas locations concerning culture/climate etc., there were many different problems we ran into that would not have happened stateside.

Difficult to assess normal operations not compatible with cultural and economic differences encountered.

With the discussion of those areas where contracting professionals could have been better prepared for during a contingency situation complete, the next question focuses on those areas that they felt least prepared for during Desert Shield/Storm.

*c. Section III - Question 3: Given Your Recent Experience, What Situations Were You Least Prepared for During the Contingency Situation?*

One would not expect that the responses to this question would differ from those on Question 1b. Generally that is the case, however comments generated for this question were many and varied. There are five areas consistently identified by contracting professionals that they felt least prepared for during Desert Shield/Storm.

The following is a list of these categories along with representative comments:

1. The cultural and language differences that existed.

The one thing that you're least prepared for is local customs and how they view the military and how they do business. Saudi's work on a commission basis, if a person brings in a customer they get a commission.

Contracting situations were not a problem. Cultural difference did create some problems, i.e., dealing with culture which will not admit they don't have the capabilities to perform certain jobs or provide equipment. Contracting procedures are available to handle those situations but are time consuming.

The totally different system by which the Arabs conduct business. We constantly had problems dealing across cultural barriers to get requirements filled.

2. Formal contracting procedures.

Contracting actions exceeding \$25,000, mobility kits lack FAR guidance and forms for contracts over \$25,000.

Formal contracted documents. Most actions were on DD1155's or SF 44's, however a formal contract is difficult to accomplish in field conditions. Communications also were a major problem for some time . . .

3. The lack of understanding that commanders had concerning the contracting process.

Field commanders who solicited, negotiated then demanded specific services with specific companies for Government and personal services. Theater operations were difficult but not impossible.

. . . Also received some opposition from some senior commanders, who felt rental cars, civilian clothes and unrestricted travel were too much for contracting personnel.

4. The interface between contracting and the accounting and financing function.

Dealing with Accounting & Finance proved to be very troubling because regardless of what our regulations authorized they seemed to have a regulation contrary.

Extremely heavy contracting requirements in the initial days of Desert Shield. Created a necessity to make "up front" cash payments for supplies and services in Dharan, Saudi Arabia.

5. The amount and speed at which requirements were generated.

Tracking immense amount of requests coming in. Lack of validation of requirements by approval authority.

Spread of build up, FAR does not really allow rapid, really rapid contracting. Insufficient personnel in field and in country big problem.

The following comments are pertinent comments that did not fit into any of the above categories:

We were authorized to wear civilian clothing during duty because of the fear of terrorist activity. We were not properly prepared, because we did not know about the weather or community. The clothes we wore did not fit in, jeans and collared shirts did.

We were least prepared on the intelligence and counter terrorism areas. Also, we could have had better coordination with the disbursing personnel.

Having to develop the actual requirement(s). Having to take time to perform Contracting Officers' Representative (COR) functions during the early days of deployment.

Not having proper specifications or specification writing capability (spent too much time determining what was needed then writing the requirements correctly so as to get the desired services and materials).

Wasn't prepared to handle so many different tasks like: vehicle control officer, pickup and delivery driver, inspector of incoming commodities to name a few. Also the 12-15 hour days were the rule.

. . . Also the ill defined Host Nation Support that was to be provided and never completely implemented.

Chapter II identified the need for contracting professionals to be included early in the planning phase of an operation. For various combat units, Desert Shield meant that they were deployed 24 to 72 hours after notification of their participation in the operation. However, the majority of units had a substantial amount of time to plan for an eventual deployment to SWA. Question 2a and 2b were designed to determine if contracting professionals were included in that planning for Desert Shield or any other contingency situation.

*d. Section III - Question 2a: During the Planning Stages of an Exercise or Other Contingencies, Prior to a Deployment, do You Have a General Idea of Your Area of Operations That may Require Contingency Contracting Support?*

An overwhelming majority of the respondents had an idea of their area of operations (AO). This is important because, if enough time is available, it allows the contracting professional to develop an acquisition plan and conduct site surveys and do market research. This understanding of the location of the AO becomes important later as contingency contracting tools are discussed. Table 4.12 provides the results of Question 2a.

**TABLE 4.12**  
**DO YOU HAVE A GENERAL IDEA OF YOUR AREA OF OPERATIONS THAT MAY REQUIRE CONTINGENCY CONTRACTING SUPPORT?**

Response	Absolute Frequency	Relative Frequency (%)	Absolute Frequency (%)
Yes	59	72.8	73.8
No	21	25.9	26.2
No Response	1	1.2	Missing
Total	81	99.9	100.0

Having the knowledge of the AO is important. However, is this knowledge sufficient for contracting professionals to have in order to be able to provide adequate and efficient contracting support to the commander? Therefore, Question 2b was designed to

provide feedback on what the respondents feel could be improved at the operational planning level so that contracting professionals are better prepared to provide contracting support.

*e. Section III - Question 2b: How Could the Planning Process at the Operational Level (G-3/ S-3) be Improved to Include Contracting Personnel?*

The comments made in Question 2b can first be divided according to their responses in Question 2a. Next, for those individuals that answered "yes" to Question 2a, the comments fell into four categories:

1. Commanders and planners were deficient in their knowledge of the contracting function and how best to use it.

The biggest roadblock is commander knowledge of the localities of contracting in contingencies. Commanders need to be briefed on method of operations and limits of authority.

Commanders and most supply officers have no idea of contracting. [Perhaps with a little education, they] next time they may have an idea of what we will need in the way of services and supplies.

Commanders must be educated on the need for contracting people at this level. Contingency contracting procedures should be written into the operations orders/plans.

Planning for and training people to manage the contracting at a G/S-3 will help. People were put in the job to track and make requests. The problem was most people did not know the process, regulatory procedure to flow of the contracting operation.

2. Contracting personnel need to be included in the site surveys.

Identification of logistic shortfalls that would have to be filled by contractors. Market surveys to insure shortfalls can indeed be filled by contractors.

Pre-site surveys are very important. Change is a constant factor we need to know what resources are available in the area to help with the planning.

3. The requirements determination of the end user requires improvement.

1. Recognize that contracting support is a key element in a successful deployment. 2. Force the planners to become the requirements determination personnel. We need to be there in the planning stages to recognize our future tasking.

...requirements anticipated to support a deployment could be better identified by including procurement personnel during the planning stages.

4. The contracting officer needs to be included as early in the planning process as possible, the operation order should include a contracting annex.

Being familiar with African Eagle '88, I found it very helpful that contracting was involved in the first planning conference prior to the full blown exercise. This type of conference is essential to smooth contingency contracting.

Have contracting personnel in these planning meetings to ensure that all directorates know what contracting can do. If supplies and services are to be contracted send someone on ahead to make these arrangements, do not wait until you are on site.

Contracting is an extremely vital part of the battle staff and should be included in this circle. Remember, anything you forgot to bring or couldn't bring must be contracted for.

Including contracting as a separate element of any mobilization planning. Placing the contracting personnel as a separate staff principal reporting to the CG. Shortfalls should be identified in advance and provided to contracting personnel.

For those respondents that answered no to Question 2a, their response to Question 2b is quite predictable. Although there are several deviations, their comments fell into the category of not knowing where their unit is going. The following comments are representative of this response:

By not knowing the area of operations no preparation could be made. Different areas have different cultures and customs which a CO dealing with the local nationals needs to know.

During this deployment we had no idea where we were going, what to expect, or who we would support. Wasn't briefed on anything during the deployment for the one exercise I was on. I was given a deployment kit and a "good luck."

Base civil engineering should have provided us with a list of necessary supplies and equipment they needed upon arrival. Transportation and security police could have provided estimated types and numbers of vehicles needed.

Many times planning was not done at [the] Corps level [to] consolidated repetitive unit requirements thus causing Company sized units to seek out [unit supplies] through [the] contracting [organization]. Units designed to control and monitor consumption of supplies were not performing as designed.

#### **4. Effect of Laws and Regulations**

It is believed that laws and regulations, as pointed out in the literature, tend to restrict the contracting professional's ability to contract in a contingency situation. The following questions tried to ascertain if the laws and regulations affected the contracting effort during Desert Shield/Storm. Question 4a was asked in order to determine the degree to which the laws and regulations affected the respondents.

*a. Section III - Question 4a: To What Degree did Current Laws or Regulations Affect Your Ability to Provide Contract Support in a Timely Manner?*

The results indicate that laws and regulations did not adversely affect the contracting effort provided in Desert Shield/ Storm. In fact over 22% of the respondents felt that the laws and regulations affected their abilities to a low degree, while less than 14% indicated that laws and regulations affected their abilities to a high degree. Table 4.13 provides the results.

**TABLE 4.13  
TO WHAT DEGREE DID LAWS OR REGULATIONS AFFECT YOUR  
ABILITY TO PROVIDE CONTRACT SUPPORT IN A TIMELY MANNER?**

Degree* Affected	Absolute Frequency	Relative Frequency (%)	Adjusted Frequency (%)
1	18	22.2	22.5
2	19	23.4	23.7
3	21	26.0	26.3
4	11	13.6	13.7
5	11	13.6	13.7
No Response	1	1.2	Missing
Total	81	100.0	100.0

\* 1=Low degree; 5=High degree

Table 4.14 was created in an attempt to determine if education, TIS, Rank, or time warranted became a factor in the degree that laws and regulations affected contracting professionals in Desert Shield/Storm. A review of this table provides no clear

criteria that helped or hindered the respondents observance of the laws and regulations. The respondents that indicated a 3 as degree that the laws affected them had the highest or next to the highest averages in all criteria.

**TABLE 4.14  
AFFECTS OF LAWS AND REGULATIONS IN COMPARISON**

Degree Affected <sup>1</sup>	Average Education Level <sup>2</sup>	Average Years in Service	Average Rank <sup>3</sup>	Average Months Warranted
1	2.4	14.3	7.4	24.5
2	2.5	12.9	9.3	26.9
3	3.0	15.3	11.2	29.0
4	2.4	12.3	7.3	31.7
5	2.7	14.9	9.2	33.7
Mean	2.6	13.9	8.8	28.54

1. 1 = low degree; 5 = high degree

2. 1 = High School; 2 = Some College; 3 = Bachelors Degree; 4 = Advanced degree.

3. 1 = E-1, 2 =E-2,..., 15 =O-6.

The next series of questions are designed to identify those laws and regulations that either helped or hindered the contracting effort during Desert Shield/Storm. Additionally, this section looks at those regulations that were commonly waived during the operations.

*b. Section III - Question 4b: Please Identify any Laws or Regulations That Proved to be Helpful During Contingencies?*

The results of this question are that an overwhelming majority (over 60%) of the respondents singled out the raising of the competition threshold. For those that this action affected, it ultimately made the simplified small purchase procedures a popular procurement action. The following comments are a representation of the remainder of the respondents.

Other than the use of the FAR for contracting guidelines there were no laws that were particularly helpful. Operations were almost like being at a regular overseas location.

Basically, during our deployment we broke no laws or regulations, none were overly helpful or a hindrance. We used our basic contract experience and did what had to be done.

The laws and regulations we knew from experience were helpful....For the most part [the same as] when contracting at a state side exercise scenario, we don't have too many problems complying with agency regulations.

As a follow-up question to Question 4b, Question 4c was structured to identify those laws that proved to be restrictive to contracting professionals during Desert Shield/Storm.

*c. Section III - Question 4c: Please Identify any Laws or Regulations That are Restrictive During Contingencies.*

The comments to this question were varied with only one law identified most frequently as being restrictive, that being the CICA. The following comments do not specifically address the laws and regulations that were restrictive. However, they are important statements in regards to the nature of the laws/regulations and their affect on contracting in Desert Shield/Storm.

There are provisions, i.e., 6.302-2(a) that allow us plenty of flexibility. Most provisions have enough gray area to afford liberal interpretations. However, the basic provisions prevented us from doing some stupid things as "knee jerk" reactions to high HQ requirements.

Most laws and regulations have workable solutions but require excessive determinations and findings. If we are at war or preparing for it the time it takes to justify one action in writing precludes three others from being completed.

During our overseas conflict, I didn't feel we were ever hindered by regulations or law. If a contingency situation occurred stateside, then more paperwork might be required due to the various clauses that have to be included.

Question 4d was designed to determine if any requests for waivers or deviations were submitted for relief from regulations.

*d. Section III - Question 4d: Identify Those Regulations That Were Most Commonly Waived During Contingency Contracting.*

In general the comments to this question identified laws or regulations that are not applicable in an overseas situation (i.e., sealed bidding, SDB, Walsh-Healy, etc.). The following comment provides a good summation of the comments provided to this question:

Those areas waived were the socio-economic, competition in contracting, although most awards were competitive, and the areas of the FAR that put time limits on awards. Time could not be wasted, most contracts were described as urgent and compelling and appropriate justifications prepared to document the files.

**5. Contingency Contracting Tools**

This line of questioning is designed to determine the effectiveness of the contingency contracting tools that were developed prior to Desert Shield/Storm and tested in these operations.

*a. Section III - Question 5a: In Preparation for a Contingency Contracting Situation did Your Contracting Organization Develop a Contingency Contracting Kit?*

The responses to this question were not at all unexpected (Table 4.15). Over 76% of the respondents had contingency contracting kit. This is because almost all Service directives require that some sort of contingency contracting kit be developed and maintained ready to deploy.

**TABLE 4.15  
DID YOUR CONTRACTING ORGANIZATION DEVELOP  
A CONTINGENCY CONTRACTING KIT?**

Response	Absolute Frequency	Relative Frequency (%)	Adjusted Frequency (%)
Yes	62	76.5	77.5
No	18	22.2	22.5
No Response	1	1.2	Missing
Total	81	99.9	100.0

The next question was designed to take advantage of the respondents' experience in developing contingency contracting kits and solicit ideas of what tools were missing from current kits.

*b. Section III - Question 5b: Comment on What Tools i.e., Standard Forms, Language Dictionary, Maps, etc., are Essential to a Contingency Contracting Kit.*

This question generated a large number of responses. The various tools identified by the respondents can be broken into three categories. The following is a listing of those tools by category that are essential to a contingency contracting kit.

1. Automation
  - (a) A laptop computer containing standard contract shells for billeting,messing, car rental etc., including standard clauses.
  - (b) A Dbase program designed to log, track, and provide detailed summary reports on purchase requests.
  - (c) Fax Machine
  - (d) Printing calculator w/memory for currency conversions.
  - (e) Cassette recorders for fast verbal orders.
  - (f) Camera (i.e., Polaroid OneStep®) and film
  - (g) Cellular phones.
2. Administrative
  - (a) Contingency contracting plan
  - (b) General forms such as: DD1155, DD1131, DD1081, SF30's, SF36's, etc.
  - (c) Include a complete FAR, not just portions.
  - (d) Official letters, explaining to contractors, your purpose, form of identification (i.e., business cards, Passports), and copy of contracting officers' warrant,
  - (e) General purpose logs for keeping track of requirements and records (if manual record keeping is required)
  - (f) Market surveys
  - (g) Point of contact lists for various agencies, (Embassy, Chamber of Commerce, etc.).
  - (h) Imprest fund administrative orders and records of appointment.
3. Miscellaneous
  - (a) Picture catalog/magazine - so when you have a language problem you can show the contractor what you want, i.e., Sears/MacMaster Catalog.
  - (c) Language dictionary.
  - (d) Local area telephone books, and maps.
  - (e) Money for initial vehicles, communications and transportation requirements.
  - (f) Metric/inch tape measure would be helpful,
  - (g) Travelers guide.
  - (h) More on customs and culture is needed, in Saudi the "custom" of giving gifts was a shock to some.

The above listing is quite extensive and may need to be tailored to the contingency. The following comments provide a good summation of the idea that the respondent tried to communicate regarding this topic. The first set of comments goes so far as to compare it to the essentials of combat, being able to "shoot," "communicate," and "move."

...SHOOT - Laptops/printers with small purchase/contract boilerplate, std forms.  
COMMUNICATE - Cellular phones/ FAX/Copiers. MOVE - Transportation.

The next comment exerts a bit of reality and common sense into what goes into a kit

All contracting forms which are needed in peacetime were needed, copy of FAR, DFARS, AFARS, maps. Especially important is a laptop computer, portable copier and FAX.

Finally, this comment reflects the nature of preparing for the unexpected:

Our contingency kits were not developed for such a long period of time and a total "bare base" environment. therefore, additional items were purchased in the Area Of Responsibility (AOR) such as: Fax machines, copier, computer, and hand held radios.

Because of the uncertainty of where the next contingency may be, the next question was developed to determine if the location of a contingency affects the types of tools needed in a contingency contracting kit.

c. *Section III - Question 5c: When Developing a Contingency Contracting Kit, is it Necessary to Tailor it to Geographical Regions? Explain.*

The nature of this question required the respondents to be committal in their answers (yes or no answer). Further, this question asked that the respondents substantiate their answers with an explanation. Of those that chose to answer this question, just over 50% of them agreed that contingency contracting kits should be tailored for geographical regions. Of those that agreed with the question, their comments are numerous and varied. The following comments provide an indication of the thoughts generated by this question:

Yes, local telephone books, cultural data, and local business practices are essential to successful overseas contracting.

...hot, humid areas use heavy bond paper whereas cool dry areas can use manifold carbon sets.

...electrical standards differ worldwide. Credit arrangements differ, delivery practices differ.

...Business Cards are essential; English should be on one side, Host nation language on the other.

...2 kits - 1 generic and 1 tailored to include site surveys, some lists, business practices, local area maps etc. - why? Contracting needs to "hit the ground running" upon arrival - can't afford to spend a lot of time getting established.

...consider the differences of "in-country" resources between Egypt and Saudi Arabia. Egypt would have posed "serious challenges" to contracting support on the scale of what we did in Desert Shield/Storm.

...if your organization has deployment plans for different geographical areas it is useful...at US Army Central Command our area of operations is SWA my experience is that the contingency contracting kit we currently have is sufficient.

Nearly 50% of the respondents that did not believe contingency contracting kits needed to be tailored for geographical areas. The following comments supported their position.

No, because ours was supposedly tailored for Europe and we used it in the Middle East. Just need a good complement of administrative supplies and common sense.

...The things we did during a deployment are standard and would be needed in all geographical regions.

...most of the time, you can get additional tools in the economy.

Not unless you will have to abide by laws of specific countries i.e., Bahrain the tariffs for port operations services are set by the Government. It would be necessary to have a list of tariffs. Maybe supplement with info from country.

## **6. Additional Comments**

Section IV of the questionnaire gave the respondents an opportunity to provide unsolicited comments of their experience contracting in a contingency situation. These comments may provide additional insight into the critical demands that a contingency contracting situation places on contracting professionals

*a. Section IV - Question 1: Feel Free to Provide any Additional Comments.*

As can be expected with such an open-ended question, the comments provided were numerous and diverse. Despite this fact, the following common categories were revealed:

1. Commander/User education. The comment that applies to the category generally reflects the lack of understanding of how to manage contracting personnel.
2. Security considerations. The comments in this category are divided into two problem areas. The first is the problem of not recognizing the security problems that exist when you have military personnel operating independently in the general populace of the country. The second problem identified is when the command recognizes this security threat and restricts the freedom of the contracting professional to conduct business.
3. Establishing an office. The establishment of an early accessible office for the contracting organization significantly assisted the ability of contracting organizations to improve PALT.
4. The relationship with finance and accounting. As identified previously in comment to question 3, contracting and finance have to operate in a symbiotic relationship. You simply cannot buy without monies.

The following comments are a cross-section of the responses to this question.

...suggest some special ID card be developed...to show we are contracting people and are authorized to contract for the Government. A xerox copy of a warrant isn't the most convincing evidence.

...2. Security - contracting people are targets. Authorization to carry weapons, concealed, allows for some self-defense. 3. The enlisted contracting force.. is in danger of being phased-out of this important job, or having our role reduced to non-warrant duties. I think this is doing a great disservice...

CCO's must be able to get off base to do business. We were restricted to base for the first 60 days and it was a [hindrance] as far as getting good prices and products for our troops....An office in the city was a big plus for us because contractors were not allowed on base. Which allowed us to talk and to see products from contractors before delivery.

For the most part, 99% of the time during operation Desert Storm, the only Law we concerned ourselves with was the anti-deficiency act. No funds No contract. If we had funds we made it work.

1. Most important to educate commanders about contracting. 2. Get phones and fax as soon as possible. 3. Get cars for mobility ASAP.<sup>4</sup>. Get contracting personnel assets like "RECON" early, deep, and upfront fast. 5. Have plenty of cash, find, negotiate, take, pay.

Contracting central is a good manageable tool to use when you're contracting theater-wide. "Contracting Central" was a lesson learned in '85-'86 that was forgotten in Desert Shield/Storm. The Services spent too much time competing between themselves for sources of supplies...

A big problem was customer education. The requiring activities had little or no knowledge on preparing requirements documents or how to write SOW.

Always ensure that the contingency contracting officers [have] a finance individual with them....immediate problems encountered were [when] the vendors refused to provide any goods or services without payment...unless they (vendors) are familiar with doing business with our government they are hesitant to accept SF44s.

#### D. SUMMARY

The main purpose of this chapter has been to solicit the opinions of contracting professionals regarding the effectiveness of their preparation for Desert Shield/Storm. The responses and comments provided on the questionnaire in Appendix A accomplished this purpose. The questionnaire sought to extract the contracting professionals' opinions on a variety of the considerations during the preparation for a contingency contracting situation and their opinion on its effectiveness. The responses and comments to the survey questions, where applicable, are either summarized in tables, narrative form or directly quoted.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

### **A. CONCLUSIONS**

The objective of this study was to evaluate the quality of the preparation that contracting professionals receive prior to contingency contracting situations. This study supports the following conclusions.

#### **1. Typical Contingency Contracting**

A typical contingency contracting situation is one in which the location is overseas and known ahead of time; adequate time is normally available to develop a buying plan to include a market survey and requirements determination. Contracting within the laws and regulations is possible and the size of the force to support is generally constant.

The background information from Chapter II and the difficulty that contracting professionals had with the definition in Chapter IV demonstrated that there is a struggle to clearly identify a typical contingency situation. The definition from the DoD Dictionary is acceptable, and captures the basis of a contingency contracting situation. However, this is not obvious without a clear understanding of the definitions for "peacetime" and "overseas location." Therefore, the researcher would offer the following as a more appropriate definition of contingency contracting:

Contracting in support of peacetime contingencies on an overseas location pursuant to the policies and procedures of the FAR. Peacetime, in that relief from the policies and procedures to any great extent is limited without an actual declaration of war or a national emergency by the President with the approval of Congress. Overseas, due to the nature of contracting outside CONUS, there are policies and procedures of the FAR that are not applicable. However, in time of emergency in CONUS, contracting officials are under the full force and effect of the policies and procedures of the Federal Acquisition System.

## **2. Contracting Professional Education**

Current instruction in basic contracting skills plus on-the-job training is sufficient to provide contracting professionals with the required competence to support a contingency contracting situation.

An overwhelming majority (80%) of the contracting professionals that responded to the questionnaire indicated that they were sufficiently prepared for Desert Shield/Storm. The preparation that these individuals received was not specifically structured to train these contracting professionals for contingency contracting, but rather to train them for their CONUS "peacetime" acquisition billet. This training was more than adequate.

## **3. The Planning Process**

When preparing for a contingency contracting situation, involvement by the contracting professional early in the planning process is essential.

In a typical contingency contracting situation, the contracting professional can, if provided the opportunity, contribute to the success or failure of an exercise. When they are included, early funding sources can be identified, a contingency contracting buying plan can be developed, and a body of knowledge of the country can be developed. This allows the contracting professional an opportunity to support the operation in the most efficient and effective manner possible. This translates to decreased PALT, which leads to the customer receiving what he wants and when he wants it.

## **4. Desert Shield and Desert Storm**

Desert Shield and Desert Storm did not represent a typical contingency contracting situation.

Chapter III presents evidence that these operations, from a contracting standpoint, changed in nature several times. However, the first 45 to 90 days of the

exercise could be considered a typical contingency contracting situation. The nature of contracting changed significantly following the initial phase that has ended in the ongoing contract closeout phase.

#### **5. "Peacetime" Laws and Regulations**

The laws and regulations of a "peacetime" acquisition system for the most part did not constrain the procurement of supplies and services during Desert/Shield Desert Storm.

This contradicts the findings in some of the earlier research discussed in Chapter II. The basis of this conclusion comes from the responses to the questionnaire discussed in Chapter IV. A large majority (72.5%) felt that the laws and regulations effected their contract support to a minimal degree. To some extent this was a result of training, but it also reflects the importance of the increase to the threshold of SF 44's and small purchases from \$25,000 to \$100,000.

#### **6. Commander and Customer Understanding**

Commanders and customers of contracting organizations can degrade the procurement process because of a lack of understanding of how to manage contracting functions to provide supplies and services in support of the mission.

The comments provided in Chapter IV made it clear that commanders and customers, in most cases, increased procurement lead times because of the misunderstanding by these individuals of the acquisition process. With a better understanding by commanders and customers of the laws and regulations and other "Do's" and "Don'ts" of contracting, most requirements can be satisfied to coincide with the urgency of the request. For example, despite the good intentions of the commander/customer, they would identify a need, contact a source, and establish an unauthorized commitment before telling the contracting organization the requirement.

Instead of saving work for the contracting agency, valuable time was wasted. As the vendors began to understand the process, and that unauthorized commitments delayed payment, they would not accept these requests. This meant that not only was lead time increased, but nothing was delivered.

### **7. Cultural Differences**

More emphasis needs to be placed on the courtesies, customs, traditions and security threats that can be expected in the country within which the contracting organization is deploying.

This is important for contracting organizations because they must operate among the general population. To require an individual to procure from local businesses is in a foreign country without the proper orientation, can severely degrade the contracting effort. The insensitivities of Americans to foreign cultures can result in vendors not doing business with the offender. Additionally, not understanding the possible terrorist threats or the dark parts of the town could place the contracting officer in an unnecessary life threatening situation.

### **8. The Contingency Contracting Tools**

The contingency contracting tools, in particular contingency contracting kits, require improvement.

Contingency contracting needs to move into the 21st century and this can be accomplished through the improvement of contingency contracting tools. The literature is quite dated in regards to the tools currently recommended. Further, recent experience provided in Chapter IV recommends some new and innovative ideas to apply to contingency contracting kits.

## **B. RECOMMENDATIONS**

### **1. Continued Education and Training**

Continue to educate and train contracting professionals for contingency contracting by emphasizing the clear understanding of the laws and regulations of a "peacetime" acquisition system.

This understanding will include a knowledge of the exceptions and waivers available within the laws and regulations that would enable expedient contracting during contingency situations. The education and training that contracting professionals receive in each service was adequate to support Desert Shield and Desert Storm. This education and training does provide a brief overview of contingency contracting, but concentrates on building a basic understanding of contracting in CONUS through instruction of the laws and regulations. With the implementation of the Defense Acquisition Workforce Improvement Act, the education process may become even more comprehensive.

### **2. Small Purchases and SF 44's**

Raise the thresholds for use of small purchase procedures and SF 44's during contingencies.

This single action, if invoked for all contingencies, would simplify the procurement and greatly enhance the response time of the procurement process organization. The threshold does not have to be raised to the level of that in Desert Shield/Storm, but could be based on such factors as the size of the operation, the availability of an HNS Agreement, and the economic condition of the country in which the operation is to take place.

### **3. Commander and Customer Education**

Contracting professionals need to provide education and training to commanders and customers they support to prepare them to better manage the contracting function to assure efficient and effective support.

By developing instruction and educating the users, valuable time can be saved during the operation. The contracting process is frustrating to those who do not understand the statutory basis of the regulations that contracting professionals must follow. Therefore, early in the preparation stage, contracting professionals need to be proactive with the commanders and customers. They have to provide the user with the guidance and procedures that will allow them to support the requirements of their plan. This education could be procedural from defining policies and procedures for the purchase request process, defining elements of a statement of work, or identifying the purchasing organization chain of command. Other areas of education may be identifying statutory and regulatory restrictions of overseas procurements.

#### **4. Foreign Cultures**

Contracting professionals need to develop a "Body of Knowledge" that will provide information and training in regards to the customs, courtesies, traditions, and security threats within the country where contingency contracting will be conducted.

This is another area where contracting professionals need to be proactive and develop a body of knowledge for the country for which they will provide contingency contracting support. The body of knowledge may consist of civilian tour books, phone listings for embassies, briefs from experts (i.e., Civil Affair Groups, Naval Investigative Service), and maps, language dictionaries etc. The area of security threat requires emphasis so that there are no casualties. Proper identification, clothes other than uniforms, and interpreters can help the contracting professional blend into the surroundings.

## **5. The Contingency Contracting Kit**

The contingency contracting kits should be improved and brought up to date.

Application of the same automation techniques used in base contracting offices can help move contingency contracting into the future. The use of the laptop computers saved an enormous amount of time and energy. The use of a shell contract was identified in Chapter IV as a tool that proved to be quite useful. Appendix B is an example of a supply shell contract. This tool is even more effective if it is copied to a diskette and used on a computer. The contracting kit required for use by the Air Force in AFR 70-7 is illustrated in Appendix C along with improvements identified in Chapter IV. This is a comprehensive listing that may need to be tailored to meet each contingency and contracting organization's needs.

## **C. ANSWERS TO RESEARCH QUESTIONS**

### **1. What are the Critical Demands of Typical Contingency Contracting Situations and How Might Contracting Professionals Best be Prepared to Meet These Demands?**

First, the critical demands of a contingency contracting situation are:

1. That contracting professionals can award contracts in a timely matter under urgent conditions within the constraints of the "peacetime" laws and regulations.
2. The characteristics of a typical contingency are subject to change without warning.
3. The inexperience of commanders and customers in utilizing contracting can prolong the procurement cycle and causes problems.
4. Courtesies, customs, traditions, and security threats provide barriers when contracting in a foreign country.
5. Repetitious administrative procedures required by a "peacetime" acquisition system are carried out in this type of environment.

Contracting professionals need to consider these demands in preparation for contingency contracting situations.

Second, contracting professionals can best be prepared for contingency contracting situations by developing their skills in peacetime contracting positions. The majority of respondents (80%), believed that they were prepared for Desert Shield/Storm. The training and education that these professionals received was not above or beyond that of any of their counterparts in the field.

**2. What Are The Fundamental Characteristics of Typical Contingency Contracting Situations?**

The fundamental characteristics of a typical contingency contracting situation are that:

1. geographic location and the size of the force is known prior to deployment;
2. there is sufficient time to develop a buying plan and conduct site/market survey; and
3. contracting is conducted within the laws and regulations of a "peacetime" acquisition system.

**3. What Are The Critical Considerations That Require Advanced Planning by Contracting Professionals in Contingency Contracting Situations?**

Critical considerations that require advanced planning by contracting professionals in contingency contracting situations are:

1. To develop a contingency contracting buying plan to include a site/market survey.
2. It is important to provide the commanders and customers training that will help them satisfy their requirements during the deployment.
3. This is a requirement for early identification of a funding source to provide funds for the procurement of supplies.
4. Contracting professionals need to develop a body of knowledge that considers cultural and security requirements of the country of deployment.

**4. What Has Recent Experience Provided Contracting Professionals Concerning the Preparation for and Execution of Contingency Contracting?**

The recent experience based on the survey has concluded that the contracting professionals deployed to Desert Shield/Storm were well-prepared for the critical demands of contingency contracting. This included contracting within the laws and regulations of a "peacetime" acquisition system.

**5. How Might Contracting Professionals Administer to the Critical Demands of Contingency Contracting Situations?**

Contracting professionals can administer to the critical demands of a contingency contracting situation through the use of contingency contracting tools. Appendix C provides a variety of tools that may be useful for contingency contracting situations. The accepted practice of developing a contingency contracting kit is a viable means to ensure these tools are planned for in advance. There is a split on whether these kits should be tailored to specific geographical areas. By reviewing the recommended tools in Appendix C, it is obvious that some tools have a tendency to be geographically specific. There is a core of tools that are generic; i.e., pencils, standard forms, and computers. However, each organization may assemble other tools as required to meet their needs.

**6. What Influence Can Contracting Professionals and Planners Provide to Enhance the Preparation for Contingency Contracting Situations?**

The influence that contracting professionals and planners can provide to enhance the preparation for a contingency contracting situation is important to the overall success of the operation. By working together with the planners during the planning process to identify requirements, conduct site surveys, and provide guidance, contracting professionals can help insure that all phases of the operation are supportable. Another not so obvious way in which contracting professionals can contribute to the planning process

is through education and training of the commanders and customers. Developing and implementing a training strategy early in the planning phase will help contribute to the successful execution of the acquisition plan.

#### **D. AREAS FOR FURTHER RESEARCH**

##### **1. Defense Acquisition Workforce Improvement Act**

Determine what effect the Defense Acquisition Workforce Improvement Act will have on the role that the enlisted contracting professional will have in future contingency contracting situations.

##### **2. Contract Administration and Post-Award Procedures**

Conduct a study of the contract administration and post-award issues and problems contracts encountered on a contingency contracting situation.

##### **3. Contract Closeout Procedures**

Identify the problems associated with contract closeout procedures once the contingency is finished.

##### **4. The SF 44's Threshold and Small Purchase Procedures**

A study should be conducted on what would be the impact of increasing the threshold for SF 44's and small purchase procedures on small contingency contracting situations. Included would be an investigation into the benefits that this increase provided and what would have been the impact if this increase was effective on 9 Aug 1990 instead of 1 Nov 1990.

## **APPENDIX A**

### **MEMORANDUM**

**From:** Scott J. Koster, Capt, USMC  
**To:** Survey Participants  
**Subj:** CONTINGENCY CONTRACTING  
**Encl:** (1) Interview Questionnaire

1. Background: I am currently a student at the Naval Postgraduate School, Monterey, CA working towards a Masters of Science degree in Management. I am attempting to gather information for my thesis. The topic of my thesis is Contingency Contracting. You have been selected as a recipient of this survey because of your recent experience in the Persian Gulf. Do not limit your response to this experience alone.
2. Purpose: The purpose of the thesis is to identify the critical demands of typical Contingency Contracting situations and provide recommendations on how to assist contracting personnel meet these demands.
3. Because of the size of the survey population please expedite the completion of enclosure (1). I have included a return envelop with postage to assist in prompt return of the survey. In those commands that have two or more respondents, please consolidate your responses in one envelope.
4. Feel free to include any additional comments. Do not limit your response to the Desert Shield/Storm experience, please include any comment in relation to peacetime exercises as well. Your response is deeply appreciated.

Scott J. Koster  
Capt USMC

## Interview Questionnaire

### **Section I: BACKGROUND INFORMATION**

1. Name. (Optional) \_\_\_\_\_ PH.# \_\_\_\_\_
2. Rank. \_\_\_\_\_ 3. Time in service. \_\_\_\_\_
4. What is your current position? \_\_\_\_\_
5. How long have you had this position? \_\_\_\_\_
6. Do you have a Contracting Officer's Warrant? \_\_\_\_\_
7. How long have you had this warrant? \_\_\_\_\_
8. What are the limitations of your warrant? \_\_\_\_\_
9. Highest level of education completed.  
\_\_\_\_\_  
\_\_\_\_\_ High School or Equivalent  
\_\_\_\_\_ Some College  
\_\_\_\_\_ 4 year college degree, degree \_\_\_\_\_, major \_\_\_\_\_

### **Section II: DEFINING CONTINGENCY CONTRACTING**

1. The Department of Defense Dictionary of Military and Associated Terms defines contingency contracting as:

"contracting performed in support of a peacetime contingency on an overseas location pursuant to the policies and procedures of the Federal Acquisition Regulations."

- 2a. Do you agree or disagree with this definition?

Agree \_\_\_\_ Disagree \_\_\_\_

- b. If you **disagree**, or feel that some changes should be made to the definition, please provide your comments.

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### **Section III: GENERAL QUESTIONS**

- 1a. How well were you prepared for your recent Contingency Contracting experience?

Prepared 1 2 3 4 5 Not Prepared

**Enclosure (1)**

b. Provide comments on areas of contingency contracting that you could have been better prepared for during normal operation tempo?

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2a. During the planning stages of an exercise or other contingencies, prior to a deployment, do you have a general idea of your area of operations that may require Contingency Contracting support. Yes \_\_\_\_\_ No \_\_\_\_\_

b. How could the planning process at the operational level ( J-3/ S-3) be improved to include contracting personnel?

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3. Given your recent experience, what situations were you least prepared for during the contingency situation?

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4a. To what degree did current laws or regulations affect your ability to provide contract support in a timely manner?

Low 1 2 3 4 5 High

b. Please identify any laws or regulations that proved to be helpful during contingencies?

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c. Please identify any laws or regulations that are restrictive during contingencies.

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d. Identify those regulations that were most commonly waived during contingency contracting.

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5a. In preparation for a Contingency Contracting situation did your contracting organization develop a Contingency Contracting Kit? Yes  No

b. Comment on what tools i.e., Standard Forms, Language Dictionary, maps, etc., that are essential to a Contingency Contracting Kit.

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c. When developing a Contingency Contracting Kit is it necessary to tailor it to geographical regions? Explain.

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#### Section IV: ADDITIONAL COMMENTS

1. Feel free to provide any additional comments.

## **APPENDIX B**

### **PART I - THE SCHEDULE** **SECTION B - SUPPLIES/SERVICES/PRICES**

COST LINE ITEM

<u>ITEM</u>	<u>UNIT</u>	<u>ISSUE</u>	<u>Total Price</u>
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\*Note: The Contractor, by signing this contract, agrees that the contractor has received full accord and settlement arising from any order previously placed under this contract, without any limitation whatsoever, and waives any and all claims under this contract.

### **PART I - CONTINUED** **SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**PART I - CONTINUED**  
**SECTION D - PACKAGING/MARKING**

**COMMERCIAL PACKAGING OF SUPPLIES AND EQUIPMENT**

The Contractor shall package all shipments in accordance with the Contractor's standard practice to prevent deterioration and damage. Each item shall be prepared for shipment in a manner which will insure arrival at destination in a satisfactory condition. Preparation for delivery shall comply with applicable carrier rules and regulations.

**PART I - CONTINUED**  
**SECTION E - INSPECTION AND ACCEPTANCE**

**INSPECTION WILL BE MADE BY THE ACQUIRING UNIT'S SUPPLY OFFICER OR HIS DULY AUTHORIZED REPRESENTATIVE.**

**ACCEPTANCE WILL BE MADE BY THE CONTRACTING OFFICER OR BY THE CONTRACTING OFFICER'S AUTHORIZED REPRESENTATIVE**

**52.246-2 Inspection of Supplies--Fixed-Price.**

**INSPECTION OF SUPPLIES--FIXED-PRICE (JUL 1985)**

(a) Definition. 'Supplies' as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Government request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the

original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) at \_\_\_\_\_ and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)

**PART I - CONTINUED**  
**SECTION F - DELIVERIES OR PERFORMANCE**

**REQUIRED DELIVERY SCHEDULE**

The Contractor shall deliver all items, in full compliance with Section C, Specifications, of this contract to the prescribed destination by (time) per proposal on (date) to Per Proposal. Failure on the Contractor's part to deliver in accordance with this contract for whatever reason, except those of Government interference or act of war may result in the Government terminating this contract for default with the rights afforded it under Section I, FAR Clause 5.1.249-8.

**CONTRACTOR NOTICE REGARDING LATE DELIVERY**

In the event the Contractor for any reason anticipates or encounters difficulty in complying with the contract delivery schedule or date or in meeting any other requirements of the contract, he shall immediately notify in writing the Contracting Officer giving pertinent details: Provided however, that this data shall be informational only in character and that its receipt by the Government shall not be construed as a waiver by the Government (i) of any delivery schedule or date or (ii) of compliance with any other contract requirement by the Contractor or (ii) of any other rights or remedies provided to the Government by law under this contract.

52.212-9 Variation in Quantity.

VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) below.

(b) The permissible variation shall be limited to:

- Percent increase [Contracting Officer insert percentage]  
       Percent decrease [Contracting Officer insert percentage]

This increase or decrease shall apply to \_\_\_\_\_ Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as (1) the total contract quantity, (2) item 1 only, (3) each quantity specified in the delivery schedule, (4) the total item quantity for each destination, or (5) the total quantity of each item without regard to destination.

(End of clause)

52.212-10 Delivery of Excess Quantities.

DELIVERY OF EXCESS QUANTITIES (SEP 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

52.247-34 F.O.B. Destination.

F.O.B. DESTINATION (APR 1984)

(a) The term 'F.O.B. destination' as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or 'constructive placement' as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified

unloading platform of the consignee. If motor carrier (including 'piggyback') is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

- (1) (i) Pack and mark the shipment to comply with contract specifications; or  
(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (2) Prepare and distribute commercial bills of lading;
- (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
- (5) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) Pay and bear all charges to the specified point of delivery.

(End of clause)

**PART I - CONTINUED**

**SECTION G - CONTRACT ADMINISTRATION DATA**

**INVOICE SUBMISSION**

Submit invoices, original and 4 copies and direct all inquiries regarding payment to:

**PART I - CONTINUED**

**SECTION H - SPECIAL CONTRACT REQUIREMENTS**

**PART II - CONTRACT CLAUSES**  
**SECTION I - CONTRACT CLAUSES**

52.202-1 Definitions.

**DEFINITIONS (APR 1984)**

(a) 'Head of the agency' (also called 'agency head') or 'Secretary' means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and, in the Department of Defense, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force and the Director and Deputy Director of Defense agencies; and the term 'authorized representative' means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) 'Contracting Officer' means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) Except as otherwise provided in this contract, the term 'subcontracts' includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of Clause)

52.203-1 Officials Not to Benefit.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

(End of clause)

52.203-2 Certificate of Independent Price Determination.

**CERTIFICATE OF INDEPENDENT PRICE  
DETERMINATION (APR 1985)**

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

#### 52.203-3 Gratuities.

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

#### 52.203-5 Covenant Against Contingent Fees.

##### COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the

Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) 'Bona fide agency' as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

'Bona fide employee,' as used in this clause, means a person employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

'Contingent fee' as used in this clause means any commission percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

'Improper influence', as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

#### 52.203-6 Restrictions on Subcontractor Sales to the Government.

##### RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1985)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

(End of clause)

#### 52.203-7 Anti-Kickback Procedures.

##### ANTI-KICKBACK PROCEDURES (OCT 1988)

###### (a) DEFINITIONS.

'Kickback' as used in this clause means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

'Person,' as used in this clause means a corporation, partnership business association of any kind, trust, joint-stock company, or individual.

'Prime Contract,' as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind. 'Prime Contractor', as used in this clause, means a person who has entered into a prime contract with the United States.

'Prime Contractor employee,' as used in this clause means any officer, partner, employee, or agent of a prime contractor.

'Subcontract,' as used in this clause, means a contract or a contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

'Subcontractor,' as used in this clause,(1) means any person, other than a prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services or any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

(2) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

'Subcontractor employee,' as used in this clause, means any officer partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (The Act), prohibits any person from:

(1) providing or attempting to provide or offering to provide any kickback;

(2) soliciting, accepting or attempting to accept any kickback; or (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract charged by a subcontractor to a prime contractor or higher tier subcontractor.

(c)(1) the contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations describe in paragraph (b) above in its own operations and direct business relationships.

(2) When the contractor has reasonable grounds to believe that a violation described in paragraph (b) above may have occurred, the contractor shall promptly report in writing the possible violation. Such reports shall be made to the Inspector General of the contracting agency, the head of the contracting agency if the agency does not have an Inspector General, or the Department of Justice.

(3) The contractor shall cooperate fully with any federal agency investigating a possible violation described in paragraph (b) above.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract, monies withheld the amount of the kickback. The Contracting Officer may order that monies withheld under (c)(4)(ii) of this clause be paid over to the government unless the government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the contracting officer when the monies are withheld.

(5) The contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1) in all subcontracts under this contract.

(End of Clause)

## 52.203-10 REMEDIES FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 1989)

(a) The Government, at its election, may reduce the price of a fixed-price-type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (c) of this clause if the head of the agency or his or her designee, determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the FAR. In the case of a contract modification the fee subject to reduction is the fee associated with the particular contract modification.

(b) Prior to making such a fee or profit reduction, the agency head or his or her designee shall provide to the Contractor a written notice of the action being considered and the basis therefor. The Contractor shall have a period determined by the agency head or his or her designee, but in no event less than 30 calendar days after receipt of such notice to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or his or her designee may, upon good cause shown, determine to reduce the contract or contract modification price or fee by an amount which is less than the amount determined under paragraph (c) of this clause.

(c) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award notwithstanding any minimum fee or 'fee floor' specified in the contract.

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 10 percent of the amount of each award fee otherwise payable to the Contractor for each incentive period or at each award fee determination point;

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award;

(ii) When the contract provides for multiple deliverables, reduce the amount otherwise payable to the Contractor upon each delivery and acceptance by an amount determined by the Contracting Officer to be the profit portion of each payable amount until the cumulative total of such reductions is equal to the initial target profit amount specified in the contract at the time of contract award;

(iii) In addition to any other withholdings, retentions or reserves, reduce the amount of progress payments otherwise payable in connection with each invoice or voucher properly submitted by the Contractor for payment until the aggregate progress payments amounts so withheld equal the initial target profit established at the time of contract award; or

(iv) If the Government elects either (c)(4)(ii) or (iii) of this clause, at the time of total final price establishment, the price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the amount of initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price. Any progress payments amounts retained by the Government in (c)(4)(iii) of this clause shall be returned to the Contractor, if appropriate.

(5) For firm-fixed-price contract or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount

determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(d) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraphs (b) and (c) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract or modification for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

#### 52.215-1 Examinations of Records by Comptroller General.

##### EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (APR 1984)

(a) This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. 'Subcontract' as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

(End of clause)

52.215-33 Order of Precedence.

ORDER OF PRECEDENCE (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

52.225-11 Certain Communist Areas.

CERTAIN COMMUNIST AREAS (APR 1984)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract--

(1) Any supplies or services originating from sources within the Communist areas of North Korea, Vietnam, Cambodia, or Cuba; or

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

(End of clause)

52.225-13 Restrictions on Contracting with Sanctioned Persons.

RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS (MAY 1989)

(a) Definitions. (1) 'Component part' means any article which is not usable for its intended function without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process.

(2) 'Finished product' means any article which is usable for its intended function without being imbedded in, or integrated into, any product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.

(3) 'Sanctioned person' means a company or other foreign person upon whom prohibitions have been imposed.

(4) 'Substantially transformed,' when referring to a component part or finished product, means that the part or product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, and use. (b) General. Section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418) and Executive Order 12661, effective December 28, 1988, impose, for a period of 3 years, with certain exceptions, a prohibition on contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or services of (1) Toshiba Machine Company, (2) Kongsberg Trading Company, (3) Toshiba Corporation,

or (4) Kongsberg Vaapensfabrkk. The Act and Executive Order also prohibit, for the same 3-year period, the importation into the United States of all products produced by Toshiba Machine Company and Kongsberg Trading Company. These prohibitions also apply to subsidiaries, successor entities or joint ventures of Toshiba Machine Company or Kongsberg Trading Company.

(c) **Restriction.** Unless listed by the Contractor in its offer, in the solicitation provision at FAR 52.225-12, Notice of Restrictions on Contracting with Sanctioned Persons, or unless one of the exceptions in paragraph (d) of this clause applies, the Contractor agrees that no products or services delivered to the Government under this contract will be products or services of a sanctioned person.

(d) **Exceptions.** The restrictions do not apply--

(1) To finished products of nonsanctioned persons containing components of a sanctioned person if these components have been substantially transformed during the manufacture of the finished product.

(2) To products or services of a sanctioned person provided--

(i) The products are designed to the specifications of a nonsanctioned person marketed under the trademark, brand or name of the nonsanctioned person;

(ii) The business relationship between the nonsanctioned person and the sanctioned person clearly existed prior to June 30, 1987; and (iii) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(3) If a determination has been made in accordance with FAR 25.1003(a)( or (b).

(e) **Award.** Award of any contract resulting from this solicitation will not affect the Contractor's obligation to comply with importation regulations of the Secretary of Treasury.

(End of clause)

#### 52.225-14 Inconsistency Between English Version and Translation of Contract.

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

#### 52.229-6 Taxes--Foreign Fixed-Price Contracts.

##### TAXES--FOREIGN FIXED-PRICE CONTRACTS (APR 1984)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) 'Contract date,' as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

'Country concerned,' as used in this clause, means any country other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

'Tax' and 'taxes,' as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

'All applicable taxes and duties', as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

'After-imposed tax,' as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

'After-relieved tax,' as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

'Excepted tax,' as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes and property taxes. 'Excepted tax' does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

#### 52.232-1 Payments.

##### PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of clause)

#### 52.233-1 Disputes.

##### DISPUTES (APR 1984)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) 'Claim', as used in this clause, means a written demand or a written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief

sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by--

(A) A senior company official in charge; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

## 52.243-1 Changes--Fixed-Price.

### CHANGES--FIXED-PRICE (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

#### 52.247-27 Contract Not Affected by Oral Agreement.

#### CONTRACT NOT AFFECTED BY ORAL AGREEMENT (APR 1984)

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Contracting Officer or an authorized representative.

(End of clause)

#### 52.247-28 Contractor's Invoices.

#### CONTRACTOR'S INVOICES (APR 1984)

The Contractor shall submit itemized invoices as instructed by the agency ordering services under this contract. The Contractor shall annotate each invoice with the contract number and other ordering office document identification.

(End of clause)

#### 52.249-2 Termination for Convenience of the Government (Fixed-Price).

#### TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (a) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount

determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted:

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

#### 52.249-8 Default (Fixed-Price Supply and Service).

##### DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as 'manufacturing materials' in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines reasonable as protection against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

**PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**  
**SECTION J - LIST OF ATTACHMENTS**

**PART IV - REPRESENTATIONS AND INSTRUCTIONS**  
**SECTION K - REPRESENTATIONS, CERTIFICATES AND OTHER**  
**STATEMENTS OF**  
**OFFERORS**

**52.203-8: REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY  
(MAY 1989)**

- (b) Certifications. As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

## CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer or bid and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (c), or (e) of the Office of Federal Procurement Policy Act\* (41 U.S.C 423) (hereinafter referred to as 'the Act'), as implemented in the FAR, occurring during the conduct of this procurement (solicitation number).

(Continuation from page 1)

(2) As required by subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

[Signature of the Officer or Employee Responsible for the Offer and date]  
[Typed Name of the Officer or Employee Responsible for the Offer]

\*Section 27 became effective on July 16, 1989.

Section 27 became effective on July 10, 1989.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(c) The signed certification in paragraph (b) of this provision shall be executed and submitted as follows:

(1) If this is an invitation for bids (IFB), with bid submission exceeding \$100,000.

(2) If this is a procurement using the two-step sealed bidding procedure (see FAR Subpart 14.5), with bids exceeding \$100,000, with submission to the Government of step-two sealed bids.

(3) If this is a request for proposal (RFP) or quotation (RFQ), by the successful offeror as close as practicable to, but in no event, later than, the date of award of a contract exceeding \$100,000.

(4) If this is an invitation for bids for an indefinite delivery-type contract, and if the estimated value of orders to be placed under the contract is expected to exceed \$100,000, with the bid submission.

(5) If this is an RFQ or RFP for an indefinite delivery-type contract, and if the estimated value of orders expected to be placed under the contract is expected to exceed \$100,000, by the successful offeror as close as practicable to, but in no event later than, the date of contract award.

(6) For letter contracts, prior to award of the letter contract and prior to definitization of the letter contracts.

(7) For other procurement actions in excess of \$100,000, prior to award or execution as specified by the Contracting Officer.

(8) The certificate required by subparagraphs (c)(3) and (c)(5) through (c)(7) of this provision shall be submitted to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificate.

(d) Pursuant to FAR 3.104-9(d), the offeror may be requested to execute additional certifications at the request of the Government.

(e) Failure of an offeror to submit the certification required by FAR 3.104-9(b) or any additional certifications pursuant to FAR

3.104-9(d) will render the offeror ineligible for contract award (see FAR 9.104-1(g)).

(f) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interest of the Government, such as disqualification of the offeror.

(g) In making the certification in subparagraph (b)(2) of this provision, the offeror may rely upon the certification by an officer, employee, agent, representative, or consultant that such person is in compliance with the requirements of subsection 27(a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR, unless the offeror knows, or should have known, of reasons to the contrary. The offeror may rely upon periodic certifications that must be obtained at least annually, supplemented with periodic training programs. These certifications shall be maintained by the Contractor for 6 years from the date of execution.

(h) The certifications in paragraph (b) and (d) of this provision are a material representation of fact upon which reliance will be placed in awarding a contract.

(End of provision)

**PART IV - CONTINUED**

**SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS**

FAR 52.216-1 The Government contemplates award of a **Firm-Fixed Price** Requirements Contract resulting from this solicitation.

**PART IV - CONTINUED**

**SECTION M - EVALUATION FACTORS FOR AWARD**

52.215-34 Evaluation of Offers for Multiple Awards.

**EVALUATION OF OFFERS FOR MULTIPLE AWARDS (MAR 1990)**

In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation and individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

## APPENDIX ~

### **CONTINGENCY CONTRACTING KIT** **(Compiled form AFR 7-70 and Chapter IV)** (additions to AFR 7-70 underlined)

#### a. Unit Deployment Kit Items (General)

##### (1) Regulations:

Applicable Service Regulations

FAR, DFAR, Service Supplement - the entire FAR or mini-FAR is preferred over parts Government Credit Card Procedures

##### (2) Forms/Ordering Instruments:

DD 1155 Order Supplies or Services/Request for Quotations

DD 1155r Reverse of Order for Supplies of Services/ Request for Quotations - Foreign

SF 26 Award/Contract

SF 30 Amendment of Solicitation/Modification of Contract

SF 33 Solicitation, Offer, and Award

SF 36 Continuation Sheet

SF 44 Purchase Order - Invoice

SF 1409 Abstract of Offers

Applicable Service Forms

##### (3) Sample Contract Formats (on floppy disk)

Services

Supplies (App 2)

Blanket Purchasing Agreement

Indefinite Delivery Type

Letter Contract

##### (4) Copy of Contingency Operational Plan Contracting Support Plan

##### (5) CCO certificate of appointment, Contracting Officers Warrant, and Official Identification

##### (6) Administrative Supplies (pens, pencils, paper, folders, cash box, metric tape measure)

##### (7) Automation Equipment (Laptop Computer, software programs (Data Base, word processor, Spreadsheet) hand-held calculators w/tape, facsimile machine, copier machine, cassette recorder, insta-matic camera, power transformer

NOTE: This equipment be used during regular activities and added to the kit immediately prior to deployment.

- (8) Pre-printed purchased order clauses (floppy with same)
- (9) Ordering officer appointment letters and training plans
- (10) Imprest Fund administrative orders and records of appointment
- (11) List of PIINs issued by sponsoring support contracting activities.
- (12) Flashlights/batteries/bulbs
- (13) Julian Calendar
- (14) CONUS telephone numbers
- (15) Government phone lists (State Department as a source for embassy numbers, Chamber of Commerce numbers foreign and domestic)
- (16) Catalogs w/pictures and prices (General), i.e., Sears/McMasters.
- (17) Money for initial car rentals

b. Deployment Specific Kits

- (1) Site Surveys of the Deployment Area.
- (2) Source lists/Market surveys
- (3) Country brief sheet and fact list, (to include customs and courtesies, security brief with danger areas)
- (4) Commercial Tour/Travel books
- (5) Language Dictionaries

c. Personal Deployment Kits

- (1) Each person assigned a mobility position shall maintain all mobility related information and personal equipment. Standard personal documents and ID required for deployment situation.
- (2) Include items that are required to help contracting professionals blend into the public sector/business district, i.e., civilian clothes

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